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**The Constitutional Court of the Kingdom of Thailand:**

**Origin, Expectations, and Reality**

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**Southeast Asian Studies**

**Master's Thesis**

**by**

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## I. Introduction

The preamble to the 1997 Constitution of the Kingdom of Thailand<sup>1</sup> claims that the motivating purposes of the draft prepared by the Constituent Assembly which became the body of the Constitution were:

promoting and protecting rights and liberties of the people, providing for public participation in the governance and inspecting the exercise of State power as well as improving a political structure to achieve more efficiency and stability . . . .<sup>2</sup>

In other words, promotion and protection of individual rights, protections against corruption, and stability of political institutions were the primary aims of the reform movement which led to the 1997 Constitution.<sup>3</sup> Such goals cannot be met without institutional structures created and supported to enforce adherence to them. One of the most important of these established by the 1997 Constitution<sup>4</sup> is the Constitutional Court of the Kingdom of Thailand.<sup>5</sup>

In discussing the need for research and academic comment on the Court, Raksasataya and Klein explain that although the Court “is the key institution

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<sup>1</sup> Constitution of the Kingdom of Thailand, enacted October 11<sup>th</sup> B.E. 2540 (1997) (Thai Const.), official English translation, available on the website of the Constitutional Court of the Kingdom of Thailand at <http://www.concourt.or.th/concourt/eng/contents/Constitution%20of%20the%20Kingdom%20of%20Thailand.pdf>. An html version is available at [http://www.oefre.unibe.ch/law/icl/th00000\\_.html](http://www.oefre.unibe.ch/law/icl/th00000_.html). Where possible, citations will be to English translations in an effort to encourage comparative scholarship on this subject.

<sup>2</sup> 1997 Thai Const., preamble.

<sup>3</sup> Accord, Amara Raksasataya and James R. Klein, eds., *The Constitutional Court of Thailand: The Working of the Court*, Constitution for the People Society/The Asia Foundation (V.J. Printing, Bangkok 2003), p. i. While this book will be cited throughout this paper for the sake of continuity, it should be noted that the book consists primarily of a brief explanatory work by the Constitutional Court’s staff entitled “A Basic Understanding of the Constitutional Court” which is also available on the Constitutional Court’s website at

<http://www.concourt.or.th/concourt/eng/contents/A%20Basic%20Understanding%20of%20the%20Constitutional%20Court.pdf> and a paper by Klein entitled “The Battle for Rule of Law in Thailand: The Constitutional court of Thailand,” available on the Australian National University’s website for its Centre for Democratic Institutions at [http://www.cdi.anu.edu.au/CDIwebsite\\_1998-2004/thailand/thailand\\_downloads/ThaiUpdate\\_Klien\\_ConCourt%20Apr03.pdf](http://www.cdi.anu.edu.au/CDIwebsite_1998-2004/thailand/thailand_downloads/ThaiUpdate_Klien_ConCourt%20Apr03.pdf).

<sup>4</sup> See, Thai Const., ch. VIII, pt. II, secs. 255-270.

<sup>5</sup> James R. Klein, “The Constitution of the Kingdom of Thailand, 1997: A Blueprint for Participatory Democracy,” Working Paper #8 in The Asia Foundation Working Paper Series (March 1998), available on The Asia Foundation’s website at <http://www.asiafoundation.org/pdf/wp8.pdf> (“The new Constitutional Court is one of the most critical elements of Thailand’s political reform process.”)

safeguarding the reforms of the 1997 Constitution,” its functions and roles are not well understood in Thai society.<sup>6</sup> It should be noted that they made this claim in 2003, when the Court had been extant for over five years and after numerous authors had written about the Court.<sup>7</sup> Although many writers have discussed the Court, most merely provide a cursory overview of the Court in works covering the 1997 Constitution more broadly without looking very far beyond the text of the specific section of the Constitution dedicated to the Court.<sup>8</sup> With one exception,<sup>9</sup> those that did go into further depth expounded on the Court’s origins and functions without discussing what the Court has done since its promulgation or how well its actions have addressed the purposes for its creation.<sup>10</sup> The only case which did receive significant media and press attention during

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<sup>6</sup> Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, p. ii.

<sup>7</sup> See, e.g., Kramol Thongdhamachat and Cahwana Tramad, *Wiwiattthanakan khong Rabop Ratthathammanun Thai chak ‘adit thung Patchuban (The Evolution of the Thai Constitutional Systems from the Past to the Present)*, (Bangkok 2002), pp. 71-74 (summarizing very briefly the constitutional provisions regarding the Court and offering some cursory insights); Pinai Nanakorn, “Re-making of the Constitution in Thailand,” *Singapore Journal of International & Comparative Law* (2002), pp. 110-111 (giving a cursory overview of the Court’s precedent’s shortcomings and how those were addressed in the 1997 Constitution); *Phoichananukrom Sap Kotmai Thai*, 3d ed., Thai Royal Academy, (Bangkok 2001), pp. 316-17 (providing a cursory overview of the Court and its functions); Sarawut Pratoomraj, *Konkay Khumkhong Sithi Manutsayachon: Tam Ratthathammanun haeng Ratcha’anachak Thai B.E. 2540 (Mechanisms for the Protection of Human Rights: According to the Constitution of the Kingdom of Thailand, 1997)*, Friedrich-Ebert-Stiftung (Bangkok 2001), pp. 5-15 (summarizing the Court’s purposes and functions and the means by which it can be utilized to protect individual rights); Gomez Khwanmuang, “Saan Ratthathammanun (The Constitutional Court),” in Bunleud Khachayutthadech and Prayong Khongmuang, eds., *Ruam Sara: Ratthathammanun Chabap Prachachon (Collected Works: The People’s Constitution)*, (Bangkok 1998), pp.320-37 (discussing the Court’s background, roles, composition, rules, procedures, and jurisdiction and adding preliminary analyses on these topics, briefly mentioning a few of the Court’s initial decisions); Decho Sawananon, *Naeothang Suksa Ratthathammanun haeng Ratcha’anachak Thai B. E. 2540 (An Approach to Studying the Constitution of the Kingdom of Thailand, 1997)*, (Bangkok 1998), pp. 254, 260-68 (providing an extremely brief overview of the courts, including the Constitutional Court, and reproducing the relevant sections from the Constitution); Borwornsak Uwanno and Wayne D. Burns, “The Thai Constitution of 1997: Sources and Processes,” 32 U. Brit. Colum. L. Rev. 227 (1998), p. 243; Klein, “The Constitution of the Kingdom of Thailand, 1997,” pp. 15-20 (addressing the precedents for the Court and how the 1997 Constitution improves on those).

<sup>8</sup> Most of the above-cited works are to this effect. Exceptions to this description would include the section in Pratoomraj’s booklet focusing on the Court and Khwanmuang’s article.

<sup>9</sup> Khwanmuang’s article does discuss some of the Court’s earliest cases, but it was published the year the Court was established, so virtually no decisions were available.

<sup>10</sup> See, e.g., Thongdhamachat and Traymad, *Wiwiattthanakan khong Rabop Ratthathammanun Thai (The Evolution of the Thai Constitutional Systems)*, pp. 71-74; Nanakorn, “Re-making of the Constitution in Thailand,” pp. 110-11; Klein, “The Constitution of the Kingdom of Thailand, 1997,” pp. 15-20.



this period was Thaksin's case, which received more than its share.<sup>11</sup> Thus, at the time Raksasataya and Klein published their work, including Klein's cogent though summary analysis of the Court's jurisprudence through the October 10, 2002,<sup>12</sup> there had been very little scholarly work done on the workings and decisions of the Court.

Given this state of scholarship and academic commentary, particularly for those limited to English-language sources, Raksasataya and Klein made the following invitation:

Central to addressing this problem is the need for a plethora of publications on the Constitutional Court and its decisions that have been specifically prepared for a variety of audiences and levels of complexity, as well as the academic research such publications arise from. It is hoped that this publication contributes in some small way to encouraging the study of the Constitutional Court of Thailand and an enhanced appreciation of the critical role that the Court plays now, and will in the future, in protecting the aspirations and interest of Thai citizens.<sup>13</sup>

Unfortunately, research reveals this invitation has yet to find any takers.<sup>14</sup> While Klein's work was very helpful, the Court has decided over 200 cases since the completion of his work.<sup>15</sup> What was true of Thai society's comprehension of the Court's institutional status and functions when Raksasataya and Klein wrote, unfortunately, remains true today and is not only true of Thai society but of those who study its political and legal institutions,

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<sup>11</sup> Decision No. 20/2544 (2001). The newspaper articles related to this case are too numerous to document here. Two political science works discussing the case, though from the perspective of Thaksin rather than that of the Court, are Duncan McCargo and Ukrist Pathmanand, *The Thaksinization of Thailand*, (NIAS Press 2005) and Pasuk Phongpaichit and Chris Baker, *Thaksin: The Business of Politics in Thailand*, (Chiang Mai 2004). This case will be discussed in its jurisprudential context below.

<sup>12</sup> Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, p. 40.

<sup>13</sup> Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, p. ii.

<sup>14</sup> Indeed, when the research for this paper was in its early stages, Dr. Klein was contacted via email to find out what further research, given that he had already addressed the topic, needed to be done. He noted that his own work only covered the Court's adjudication through the end of 2002 and that significant developments had taken place since then which bore heavily on the question of whether the Court was fulfilling its intended functions. (email correspondence 1/26/06).

<sup>15</sup> See, summary of the Court's decisions available on its website at [http://www.concourt.or.th/concourt/en\\_index.jsp](http://www.concourt.or.th/concourt/en_index.jsp).

many of whose writings are indicative of an underestimation of its role.<sup>16</sup> Those whose writing does not indicate a misunderstanding nevertheless add little to the academic discussion, generally focusing on other aspects of the Constitutional Reforms.<sup>17</sup> While the writings about constitutional reforms and political institutions in Thailand demonstrate a recognition, limited though it may be, of the importance of the Constitutional Court in theory, very little has been written about what it has done in practice.<sup>18</sup> More work is required to understand and assess the Court's performance as judged by the roles it was intended to play and those which it should play in the future.

This paper represents an effort to begin to address this gap in the academic literature. Section II discusses the origins, background, and functional and institutional precedents of the Constitutional Court. Section III will then address the roles and functions of the Court as stated in the Constitution and explained by commentators. While these first two topics have been addressed by other writers, they are necessary to lay the foundational understanding required to make the data and analysis regarding the Court's jurisprudence since its inception presented in Section IV comprehensible and to assess the degree to which the Court has fulfilled its envisioned functions and roles, the topic of Section V. Thus, this project is not intended to provide a full history of the Court, or even a comprehensive but brief history of the Court. Rather, it is intended as a sort of brush clearing to lay the foundations and point directions for further work on the Thai

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<sup>16</sup> See, e.g., McCargo and Pathmanand, *Thaksinization*, pp. 15-17 (underemphasizing role of the Court); Pasuk and Baker, *Thaksin*, p. 176 (claiming the Court is under Thaksin's control).

<sup>17</sup> See, e.g., Andrew Harding, "Thailand's Reforms: Human Rights and the National Commission," *Journal of Comparative Law* (Wildy Simmonds, & Hill 2006), *The Journal of Comparative Law*, p. 96, available at <http://www.wildy.co.uk/jcl/pdfs/harding.pdf?PHPSESSID=161423dee6e6e4081b31add9e07ed405>.

<sup>18</sup> Khwanmuang's article and Klein's work in Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, in addition to the attention given to Decision 20/2544 (Thaksin's case) represent the significant exceptions to this claim. However, as discussed above, these are insufficient to serve as a basis for assessing the Court's performance against the roles it was intended to have at its inception, despite the quality of Klein's work, as even he has stated the need for further scholarship on this topic.



Constitutional Court, its roles, its decisions, and work comparing it with similar institutions in other countries.

## **II. Historical Sources**

“Prior to promulgation of the Constitution of the Kingdom of Thailand (1997), Thailand had never had a tradition nor legal precedent for an independent agency to rule on political and legal issues.”<sup>19</sup> While Klein’s assertion regarding the lack of precedent for the Constitutional Court is correct in the limited sense in which it is intended, it cannot be taken to mean the Court is without precedent of any sort. That is to say that the Court is an innovative institution in that, prior to its establishment, there had never been one institution entrusted with the same responsibilities and empowered in the same way as the Court is. While true, this does not mean that the roots of its powers and functions are nonexistent in the system of governance. The predecessors to some of the Courts powers and functions can be traced back to 1946.<sup>20</sup>

### **A. Thai Supreme Court’s (Saan Dika) Decision No. 1/2489**

Thailand had allied itself with Japan in World War II but sought to avoid any negative repercussions from its acquiescence to Japan’s military might and demands through diplomatic means in a post-war foreign policy designed to curry Western favor. One means for doing so was through the enactment of legislation criminalizing certain acts which had been perpetrated by Thais in furtherance of the alliance with Japan through the War Criminal Act of 1945 (Phraratchabanyat Achayagon Songkhram, B.E. 2488). Pursuant to this Act, war-time Prime Minister Field Marshal Plaek

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<sup>19</sup> Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, p. 35.

<sup>20</sup> As Klein does himself in “The Constitution of the Kingdom of Thailand, 1997,” p.17-18.

Phibunsongkhram was prosecuted for some of his actions during the war.<sup>21</sup> Ultimately, the Supreme Court saved him from the firing squad,<sup>22</sup> but more important for present purposes is how it did so.

In finding for Field Marshal Phibunsongkhram, the Supreme Court interpreted and applied the Section 14 of the Constitution providing for bodily liberty to mean freedom to act within the bounds of the law in force at the time of action.<sup>23</sup> The Court reasoned that because the War Criminal Act, as applied in this case, would punish for acts which were lawful at the time they were committed, that portion of the Act as applied in this case was unconstitutional and thus void.<sup>24</sup>

To modern readers, this appears to be a sensible and relatively uninteresting application of the doctrine of judicial review. What makes this case important for the purposes of this paper and in the development of the Constitutional Court is that no Thai court had ever claimed such power. Moreover, the Supreme Court had asserted this power in spite of a constitutional provision purporting to vest Parliament with the exclusive right to interpret the Constitution.<sup>25</sup> The Supreme Court overcame this hurdle by citing the constitutional provision empowering the courts to decide cases at law and reasoning the power to interpret was implicit in such a mandate.<sup>26</sup> By so doing, the Supreme Court established the power of judicial review in the Thai system of governance, demonstrating that the Constitution could override Parliamentary Acts. However, it still lacked the institutional capacity of a constitutional court in that it was not clear when

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<sup>21</sup> See, *Khamphiphagsa Khadi Achayagam Songkhram (War Crimes Act Case)*, Decision No. 1/2489, Supreme Court of Thailand, in Nawicharoen Bannathigan, *Khamphiphagsa Dika B.E. 2489 (Supreme Court Judgments, 1946)*, (Bangkok 1946), pp. 624-45.

<sup>22</sup> *Ibid.*, p. 633; see also Klein, "The Constitution of the Kingdom of Thailand, 1997," p.17.

<sup>23</sup> Decision No. 1/2489, p. 624.

<sup>24</sup> *Ibid.*, p. 633.

<sup>25</sup> *Ibid.*, p. 629, citing Section 62 of the Constitution.

<sup>26</sup> *Ibid.*, p. 629, citing Section 58 of the Constitution.



parties could raise constitutional claims or if all provisions of the Constitution could give rise to such claims. Moreover, the Supreme Court served as little, if any, check on the legislature, as can be seen by the legislature's actions described in the following section.

## **B. The Constitutional Tribunal**

In reaction to the Supreme Court's decision in the War Criminals Act Case, "the drafters of the 1946 Constitution created the Judicial Committee for the constitution with absolute powers of judicial review."<sup>27</sup> Klein continued to explain that, under this system, "if a court considered a law to be unconstitutional, it could reserve judgement and submit an opinion to the Judicial Committee for a ruling."<sup>28</sup> Essentially, the legislature acted to prevent the Supreme Court from continuing to broaden its power to interpret the Constitution by removing such considerations from the Supreme Court's province and assigning them to the Judicial Committee. What Klein refers to as a Judicial Committee was replaced in 1949 with the Constitutional Tribunal (Khana Tulakan Ratthathammanun)<sup>29</sup> and was almost uniformly<sup>30</sup> constitutionally provided for in one form or another from 1946 until it was replaced by the Constitutional Court in 1997.<sup>31</sup>

While the Constitutional Tribunal's powers and independence varied to a certain degree under the various Thai constitutions,<sup>32</sup> it generally lacked the power to enforce its

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<sup>27</sup> Klein, "The Constitution of the Kingdom of Thailand, 1997," p.18, citing Somyos Chuathai, "Khamathibai Lak Rattathammanun Thuabai (Explanation of General Constitutional Principles)," (Bangkok 1992), pp. 59-60 and Constitution of the Kingdom of Thailand, 1946, secs. 87-89.

<sup>28</sup> Ibid.

<sup>29</sup> Klein, "The Constitution of the Kingdom of Thailand, 1997," p. 43 n. 17.

<sup>30</sup> Ibid., n. 16 (explaining that "the short-lived 1951 and 1957 constitutions are an exception" but a qualified one in that both "constitutions were used during periods" of military rule). Apparently discounting these two exceptions, Khwanmuang asserts that all seven versions of the constitution from 1946 through 1991 contained provisions regarding a Constitutional Tribunal. "Saan Ratthathammanun (The Constitutional Court)," p. 321.

<sup>31</sup> Klein, "The Constitution of the Kingdom of Thailand, 1997," p.18.

<sup>32</sup> See, Klein, "The Constitution of the Kingdom of Thailand, 1997," p.18 and 44 n. 18; see also Khwanmuang, "Saan Ratthathammanun (The Constitutional Court)," p. 321 (summarizing the differences in the provisions regarding the Constitutional Tribunal in the various constitutions).

judgments and completely lacked independence from the political system.<sup>33</sup> Another important shortcoming of the Constitutional Tribunal, at least until the version created by the 1991 Constitution, was that the ultimate power to interpret the Constitution resided not in the Constitutional Tribunal but in Parliament.<sup>34</sup> While this particular shortcoming was overcome through Article 207 of the 1991 Constitution in which “the right of interpretation was granted to the Constitutional Tribunal,”<sup>35</sup> its other shortcomings remained. Indeed Thongdhamachat claims it was more properly conceived of as a political institution rather than a court.<sup>36</sup> This claim finds support in the text of Chapter X of the 1991 Constitution, entitled “The Constitutional Tribunal”.<sup>37</sup>

To begin, that the Tribunal was given its own chapter in the Constitution rather than being included in the section relating to courts,<sup>38</sup> indicating an understanding of its institutional character as clearly different from a court. The most striking feature of the Constitutional Tribunal under the 1991 Constitution becomes clear from the provisions regarding the Tribunal’s composition. First, it was presided over by a political figure, the President of the National Assembly, rather than a judge.<sup>39</sup> Another politician, the President of the Senate, was to serve on the Tribunal along with the President of the Supreme Court, the Attorney General (which is arguably a political position), and six experts, half of which were to be appointed from the field of law with the other half to

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<sup>33</sup> Ibid.

<sup>34</sup> Klein, “The Constitution of the Kingdom of Thailand, 1997,” p.18, citing the 1946 Thai Const., sec. 86.

<sup>35</sup> Klein, “The Constitution of the Kingdom of Thailand, 1997,” p.18.

<sup>36</sup> Thongdhamachat, *Wiwatthanakan khong Rabop Ratthathammanun Thai (The Evolution of the Thai Constitutional Systems)*, pp. 71.

<sup>37</sup> 1991 Thai Const., ch. X, available online at <http://www.parliament.go.th/files/library/law10e.htm>. On the institutional shortcomings of the Constitutional Tribunal, particularly looking to the version under the 1991 Constitution, see Thongdhamachat, *Wiwatthanakan khong Rabop Ratthathammanun Thai (The Evolution of the Thai Constitutional Systems)*, pp. 71; Nanakorn, “Re-making of the Constitution in Thailand,” p. 110; Khwanmuang, , “Saan Ratthathammanun (The Constitutional Court),” p. 322-23.

<sup>38</sup> See, 1991 Thai Const., ch. VIII (Courts) and ch. X (Constitutional Tribunal).

<sup>39</sup> 1991 Thai Const., ch. X, sec. 200.



have backgrounds in political science.<sup>40</sup> These six appointments were made by the House of Representatives and the Senate.<sup>41</sup> This group of experts served for only four years but could be reappointed.<sup>42</sup> “Obviously, the discharge of [the Tribunal’s] duty could be influenced by the person having the power to recommend re-appointment.”<sup>43</sup> With the exception of the President of the Supreme Court, the same could be said of the remaining members of the Tribunal.

These provisions make clear that the Tribunal, throughout its history, was not intended to be independent from the political process. Moreover, it was apparently never intended (or at least not enabled) to play a large role. “Its lack of importance was highlighted by the fact that its members were not even full-time Tribunal members.”<sup>44</sup> Surely, appointing people to the Tribunal who already hold jobs such as presiding over the National Assembly, Senate, and Supreme Court is an indication that the appointment was not anticipated to require much time or effort. The historical record accords with such an understanding – from 1946 until 1991, the Tribunal handed down a mere 13 decisions.<sup>45</sup>

### **III. Expected Role**

While the focus of this paper is the Thai Constitutional Court, at least an introductory understanding of the reform movement which led up to the 1997

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> 1991 Thai Const., ch. X, sec. 202.

<sup>43</sup> Nanakorn, “Re-making of the Constitution in Thailand,” p. 110.

<sup>44</sup> Klein, “The Constitution of the Kingdom of Thailand, 1997,” p.19.

<sup>45</sup> Khwanmuang, , “Saan Ratthathammanun (The Constitutional Court),” p. 322. Khwanmuang does not cite his source for this information, and I have been unable to discover any information regarding the Constitutional Tribunal for the period 1991-1997. However, given the large degree of similarity between the 1991 Constitutional Tribunal and previous versions, it seems likely there was not a large increase in activity. Alternatively, it might be the case that an increase in such activity made the need for a Constitutional Court more obvious, helping pave the way for its establishment. Without available data, there cannot be a definitive answer.

Constitution and the Court's establishment is essential to an analysis of the Court's origin, its functions, and its character. "Its establishment is part and parcel of the current process of political reform in which the basic rights and freedoms of the Thai people are enhanced and clearly guaranteed in the Constitution."<sup>46</sup> As noted in the introduction, the driving forces behind this reform movement were threefold: promote and protect rights, encourage popular participation in government, and to increase and ensure the transparency, stability, and efficiency of governmental organs.

The discussion in Section II demonstrates that the powers and institutions available at the time of this reform movement were incapable of contributing towards these ends in a significant way, let alone truly safeguarding them. The Supreme Court, although arguably sufficiently reputable to garner the kind of deference necessary to achieve these goals, lacked essential institutional requirements. It lacked the breadth of jurisdiction required to address numerous constitutional issues, such as division of powers, unless they were somehow related to a case over which it had jurisdiction. Moreover, Parliament had made clear its desire that the interpretation of the Constitution (and, thus, its enforcement) was not to fall within the province of the courts but of the Constitutional Tribunal in constitutions from 1946 onward, as discussed above. Under Section 206 of the 1991 Constitution, the courts were required to submit such questions to the Constitutional Tribunal,<sup>47</sup> removing this function from the powers of the courts. On the other hand, the Constitutional Tribunal lacked the independence, reputation, resources, and will to carry out these functions. In short, there existed no institution in 1997 in Thailand with the requisite independence and power to ensure the achievement of

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<sup>46</sup> Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, p. 3.

<sup>47</sup> 1991 Thai Const., ch. X, sec. 206.



the goals of the 1997 reform movement. Therefore, the framers of the 1997 Constitution were left with no alternative but the creation of a new institution, or new institutions, entrusted with achieving and ensuring these aims.

One might wonder why the Constitutional Drafting Assembly (CDA) decided to create a Constitutional Court and grant it such broad powers. This concern is difficult to address if one assumes the legislature wielded a great deal of influence over the CDA. However, only twenty-three of the CDA's ninety-nine members were appointed by the Parliament, while the remaining seventy-six were drawn from the provinces, one from each.<sup>48</sup> Although Parliament's final approval was required, its refusal could have been overridden by a simple majority in a public referendum.<sup>49</sup> Additionally, as stated above, the 1991 Constitution had already moved in this direction. Indeed, in the CDA, the establishment of the Constitutional Court and its powers was most opposed by the judiciary which wished to keep or consolidate power within the then extant framework.<sup>50</sup> This dissonance led to important concessions discussed by Klein<sup>51</sup> but not addressed in-depth here.

#### **A. Establishment**

Pursuant to the 1997 Constitution,<sup>52</sup> the Constitutional Court of the Kingdom of Thailand was established "by Royal Command, dated 11 April, B.E. 2541 (1998)"<sup>53</sup> and handed down its first decision in May of that year.<sup>54</sup> While giving it the title "Court" and the including in the chapter of the Constitution dedicated to the courts, in and of

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<sup>48</sup> Uwanoo and Burns, "The Thai Constitution of 1997," p. 240.

<sup>49</sup> Ibid.

<sup>50</sup> Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 36.

<sup>51</sup> See, Raksasataya and Klein, *The Constitutional Court of Thailand*, pp. 36-37.

<sup>52</sup> Thai Const., ch. VII, pt. II, secs. 255-270.

<sup>53</sup> Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 3.

<sup>54</sup> See, Decision No. 1/2541.

themselves, demonstrate a significant change in the way this body was perceived, these are insufficient to provide this institution with the requisites for achieving the roles contemplated for it in the overall reshaping of governance. Courts do not, indeed cannot, enforce compliance with their judgments. Instead, they rely on the parties' perception of their legitimacy and adherence to principles to which individuals and entities feel bound to submit in order to ensure compliance with their decisions. Thus, the appearance of both independence and power or authority is vital to a court's utility. As demonstrated by the text of the Constitution and the analyses of commentators, the 1997 Constitution makes significant progress in providing the Court with these necessary elements.

### **1. Composition**

The Court is made up of a total of fifteen judges who are to come from the Supreme Court (five judges, elected at a general meeting of the Supreme Court),<sup>55</sup> the Supreme Administrative Court (two judges, elected at a general meeting of the Supreme Administrative Court),<sup>56</sup> five experts from the field of law,<sup>57</sup> and three experts from the field of political science.<sup>58</sup> These are "to be appointed by the King upon advice of the Senate . . . ."<sup>59</sup> Once elected, the judges are to hold a meeting and elect one of their number to serve as President of the Constitutional Court.<sup>60</sup> The Court prescribes its own procedure which must adhere to certain "fundamental guarantees" of fairness.<sup>61</sup> The

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<sup>55</sup> Thai Const., ch. VIII, pt. II, sec. 255(1).

<sup>56</sup> Thai Const., ch. VIII, pt. II, sec. 255(2).

<sup>57</sup> Thai Const., ch. VIII, pt. II, sec. 255(3).

<sup>58</sup> Thai Const., ch. VIII, pt. II, sec. 255(4).

<sup>59</sup> Thai Const., ch. VIII, pt. II, sec. 255.

<sup>60</sup> Ibid.

<sup>61</sup> Thai Const., ch. VIII, pt. II, sec. 269. For a current version of the Court's rules, see Amara Raksataya, ed., "Rule of Procedure of the Constitutional Court, 2003," at <http://www.concourt.or.th/concourt/eng/contents/Rule%20of%20Procedure%20of%20the%20Constitutional%20Court.pdf>.

judges are appointed for a term of nine years and are prohibited from re-appointment.<sup>62</sup>

One's term may be shortened by death, resignation, reaching 70 years of age, committing a prohibited act, or through removal.<sup>63</sup>

Comparing the Thai Constitutional Court with other constitutional courts or with other bodies to which it bears significant similarity, such as the International Court of Justice (ICJ), is an interesting topic for further research. For example, the Constitutional Court and the ICJ are similar in numerous respects. Like the Constitutional Court, the ICJ has 15 members<sup>64</sup> who each serve nine-year terms.<sup>65</sup> Moreover, the members of the ICJ come from similarly diverse backgrounds – some with academic backgrounds and others with legal or judiciary experience.<sup>66</sup> Lastly, the ICJ and the Thai Constitutional Court are both somewhat hybrids in that they do not follow either a purely-common law or a purely civil law tradition. This tension in the ICJ is created by the deliberate lack of guidance in its statute in this respect combined with the differing backgrounds of its members where, in the Thai context, it comes from the precedential weight given to its decisions<sup>67</sup> despite its place in a civil law tradition.<sup>68</sup>

## **2. Qualifications**

The qualifications for the judges vary drastically depending on their background (i.e., whether they come from other courts or from a field of expertise). The only

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<sup>62</sup> Thai Const., ch. VIII, pt. II, sec. 259.

<sup>63</sup> Thai Const., ch. VIII, pt. II, sec. 260.

<sup>64</sup> Statute of the International Court of Justice (ICJ Stat.), art. 3(1); available online at [http://www.icj-cij.org/icjwww/ibasicdocuments/ibasicstext/ibasicstatute.htm#CHAPTER\\_I](http://www.icj-cij.org/icjwww/ibasicdocuments/ibasicstext/ibasicstatute.htm#CHAPTER_I).

<sup>65</sup> ICJ Stat., art. 13(1).

<sup>66</sup> Biographies of the current members of the ICJ are available on the Court's website at <http://www.icj-cij.org/icjwww/igeneralinformation/igncompos.html>.

<sup>67</sup> See, Thai Const., ch. VIII, pt. II, sec. 264 (requiring submission of constitutional issues to the Constitutional Court only where such issues have not yet been decided by it).

<sup>68</sup> See, Judge Peter J. Messitte, "Common Law v. Civil Law Systems," available on the US State Department's website at <http://usinfo.state.gov/journals/itdhr/0999/ijde/messitte.htm> (explaining the differences between the two systems, particularly discussing civil law's emphasis on code law and common law's allowance for judge-made law in the form of precedent).

qualification applicable to those coming from other courts is that they be elected in a general meeting of their court.<sup>69</sup> It might be thought that this would be sufficient since, presumably, these judges would already have met the qualifications required for their appointing courts. However, no such constitutional provisions exist, and those extant under the Regulation of the Judicial Service Act are less stringent than those required of non-judge appointees to the Constitutional Court.<sup>70</sup> These requirements simply do not speak to political neutrality. Judges to come from the fields of law and political science, on the other hand, have to meet several qualifications unrelated to their expertise. These include being of Thai nationality,<sup>71</sup> being at least forty-five years of age,<sup>72</sup> not being a

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<sup>69</sup> Thai Const., ch. VIII, pt. II, sec. 255(1) and (2).

<sup>70</sup> See, Charunun Sathitsuksomboon, "Thailand's Legal System: Requirements, Practice, and Ethical Conduct," Tilleke & Gibbins International Ltd., September 2001, p. 5, available online at [http://72.14.203.104/search?q=cache:KqClFuRhdd0J:www.tillekeandgibbins.com/publications/pdf/thailand\\_legal\\_system.pdf+qualifications+judges+thai+court&hl=en&gl=us&ct=clnk&cd=3](http://72.14.203.104/search?q=cache:KqClFuRhdd0J:www.tillekeandgibbins.com/publications/pdf/thailand_legal_system.pdf+qualifications+judges+thai+court&hl=en&gl=us&ct=clnk&cd=3), citing Section 26 of the Regulation of the Judicial Service Act B.E. 2543 (AD 2000). According to this law, to sit for the examination required to become a judge, one must

- (a) hold[] Thai nationality
- (b) be not less than 25 years of age
- (c) uphold[] the democratic regime according to the Constitution with good faith
- (d) be an ordinary member of the Thai Bar Association
- (e) not hav[e] ignominious or immoral conduct
- (f) not be[] insolvent
- (g) not be[] under suspension or hav[e] temporarily resigned pursuant to the Regulation of the Judicial Service Act or other laws
- (h) not hav[e] been expelled, dismissed or removed from official service, any state agency or state enterprise
- (i) not be[] imprisoned by a final judgement, except for an offence committed through negligence or as a result of a petty offense
- (j) not be[] incompetent or a quasi-incompetent person, or a person of unsound mind or mental disorder or having a body or mental condition inappropriate for being a judge, or having a disease, as prescribed by the Regulation of the Judicial Service Commission
- (k) hav[e] passed physical and mental examinations by a committee of doctors, consisting of not less than three; the report of such committee shall be approved by the Judicial Service Commission.

Research revealed no indications of Supreme Court or Administrative Court judges being required to meet higher or more stringent qualifications than those generally applicable to all judges.

<sup>71</sup> Thai Const., ch. VIII, pt. II, sec. 256(1).

<sup>72</sup> Thai Const., ch. VIII, pt. II, sec. 256(2).



Buddhist priest, novice, monk or clergyman,<sup>73</sup> as well as several aimed at ensuring the political neutrality of the those to be elected,<sup>74</sup> among others.<sup>75</sup>

### **3. Prohibitions**

While the qualifications differ depending on from what group the judge comes, the prohibitions on his/her conduct are uniform in application. Judges may not be a government official in a position which is permanent or which provides a salary.<sup>76</sup> They are also prohibited from being an official or an employee of a state agency or enterprise.<sup>77</sup> Further, the judges may not hold any position in a for-profit company or business or engage in any independent profession.<sup>78</sup> Should it become known that a judge did not cease to engage in any such activities within fifteen days of his or her election, “it shall be deemed that that person has never been elected . . . .”<sup>79</sup> Engaging in any of these acts once one has joined the Court is grounds for immediate vacation from office.<sup>80</sup>

#### **B. Powers**

The Court’s powers and functions under the Constitution have been described in numerous and varying ways. Uwanno and Burns explained the Court was “empowered to deal with all laws challenged as unconstitutional and to decide issues involving

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<sup>73</sup> Thai Const., ch. VIII, pt. II, sec. 256(4), cf. Thai Const., ch. VI, pt. II, sec. 106(2).

<sup>74</sup> Thai Const., ch. VIII, pt. II, sec. 256(5) (“not being a member of the House of Representatives, senator, political official, member of a local assembly or local administrator”); 256(6) (“not being or having been, in the past, a member or holder of other position of a political party over the period of three years preceding the taking of office”); 256(7) (not being an Election Commissioner, an Ombudsman, a member of the National Human Rights Commission, a judge of an Administrative Court, a member of the National Counter Corruption Commission or a member of the State Audit Commission”).

<sup>75</sup> Thai Const., ch. VIII, pt. II, sec. 256(4), cf. Thai Const., ch. VI, pt. II, secs. 106 and 109.

<sup>76</sup> Thai Const., ch. VIII, pt. II, sec. 25 (1).

<sup>77</sup> Thai Const., ch. VIII, pt. II, sec. 258(2).

<sup>78</sup> Thai Const., ch. VIII, pt. II, sec. 258(3)-(4).

<sup>79</sup> Thai Const., ch. VIII, pt. II, sec. 258.

<sup>80</sup> Thai Const., ch. VIII, pt. II, sec. 260(5).

overlapping authority.”<sup>81</sup> The authors of the introduction to the Court on the Court’s website are more precise:

The Constitutional Court is entrusted with the responsibility of ruling on the constitutionality of organic laws, laws, regulations, draft laws and regulations, resolutions made by political parties, status of members of the House of Representatives and the Senate, actions of governmental organizations which may infringe upon the basic rights and freedoms of the people, legal cases referred to it by the Courts . . . , status of Cabinet members and members of the Election Commission, conflicting jurisdiction of different constitutional bodies and questions referred to it by the National Counter Corruption Commission and the Ombudsmen etc.<sup>82</sup>

While accurate, this description is somewhat lacking if elucidation is desired. Thus, the Court’s powers and functions under the Constitution are described below.<sup>83</sup> The classifications are offered as a means of organizing the Court’s numerous functions in a way that is easier to understand. As delineated, there is some overlap between the groupings of powers as some functions can be accurately classified into more than one group. It is also vital to note at this point that Section 268 requires the Court’s decisions “be deemed final and binding on the National Assembly, Council of Ministers, Courts and other State organs.”<sup>84</sup> Therefore, the powers exercised by the Court are to be supported, given effect, and not derogated by these bodies.

## **1. Judicial Review**

One of the most important tasks the Court is to perform involves the determination of “the constitutionality of parliamentary acts,” including “both the text of

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<sup>81</sup> Uwanoo and Burns, “The Thai Constitution of 1997,” p. 243.

<sup>82</sup> In Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 4.

<sup>83</sup> The chart found in Raksasataya and Klein, *The Constitutional Court of Thailand*, pp. 29-32 was consulted and referred to for this section, though several additions and changes were necessary, given that the chart omitted important jurisdictional sections, such as Section 192 (or, more properly, organic law made pursuant to this section) and Section 328.

<sup>84</sup> Thai Const., ch. VIII, pt. II, sec. 268.

the legislation passed as well as the process the legislators followed.”<sup>85</sup> This responsibility overlaps to a great extent with the enforcement of individual rights embodied in the Constitution, since such acts may be challenged by individuals as contravening the Constitution under Section 264 or by the Ombudsman, as discussed below.<sup>86</sup> Section 262 provides a way for the Court to pass on the constitutionality of laws that have been approved or reaffirmed by the National Assembly.<sup>87</sup> While this process is essentially the same as that set out for advisory opinions in many jurisdictions, the word “advisory” is a bit of a misnomer in this context since a determination that a bill or organic law or a part thereof is contrary to the Constitution by the Court mandates the lapsing of that bill, law, or part thereof.<sup>88</sup> The Court’s responsibility in this area, as with each of the functions discussed, may be expanded as provided for in organic laws made pursuant to Section 192.<sup>89</sup>

## **2. Constitutional Institutions and Functioning**

The Court functions as both an arbiter between constitutional bodies and an overseer of them. That is to say that the Court has the power to determine questions arising “as to the powers and duties of organs under the Constitution” where such organs or the President of the National Assembly submit the matter to the Court.<sup>90</sup> Where such a dispute exists, Section 266 mandates (“shall submit”) submission to the Court but

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<sup>85</sup> Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 42.

<sup>86</sup> See, Thai Const., ch. VIII, pt. II, sec. 264; see also Pratoomraj, *Konkay Khumkhong Sithi Manutsayachon (Mechanisms for the Protection of Human Rights)*, p. 11-13 (describing how Section 264 can be used to enforce individual rights).

<sup>87</sup> Thai Const., ch. VIII, pt. II, sec. 262.

<sup>88</sup> Ibid. While the binding nature of advisory opinions is not necessarily out of the ordinary for jurisdictions which have this feature, the term is, nevertheless, something of a misnomer, even if a uniformly used one.

<sup>89</sup> See, Thai Const., ch. VI, pt. V, sec. 192. An example of such expansion is the Court’s jurisdiction to hear cases regarding the dissolution of political parties pursuant to Organic Law of the Political Party Act, art. 65(2) (cf. Thai Const., ch. XIII, sec. 328).

<sup>90</sup> Thai Const., ch. VIII, pt. II, sec. 266. Such organs include the National Counter Corruption Commission, the Election Commission, the Senate, the House, etc.

provides no procedure for establishing a dispute where neither party makes a submission. This could mean that when faced with actual disputes between such organs, if both (or all, if the dispute is multilateral) sides wish to avoid Court proceedings, the dispute could be settled through other means or not settled at all in contravention of the Constitution. Thus, although either side can submit a case and opinion for consideration under Section 266, there remains a gap between the constitutional mandate and the Court's powers. This is because the Court is supposed hear all disputes between constitutional organs but is reliant on those organs to submit the dispute in the first instance. Should this prove to be problematic in practice, the provision could be amended to allow the Court to begin such a case on its own motion and require submissions from both sides pursuant to its broad fact-finding powers under Section 265.<sup>91</sup>

The Court has numerous roles in the oversight of various constitutional organs in the performance of their responsibilities. One way the Court oversees or checks the Election Commission is by adjudicating challenges to the qualifications or activities of Election Commissioners under Section 142.<sup>92</sup> Additionally, it was to adjudicate on the constitutionality of regulations prescribed by the Election Commission where the Commission had determined the law concerning the election of members of the House was unconstitutional and had replaced it with regulations of its own, prior to the promulgation of the organic law bills on elections made pursuant to Section 323.<sup>93</sup> The last, and probably most important, function of oversight the Court performs with regard

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<sup>91</sup> See, Thai Const., ch. VIII, pt. II, sec. 265.

<sup>92</sup> Thai Const., ch. VI, pt. IV, sec. 142.

<sup>93</sup> Thai Const., ch. XIII, sec. 324.



to the Election Commission is to evaluate the Commission's decisions to dissolve parties for non-compliance with Section 328.<sup>94</sup>

Apart from passing on the constitutionality of the laws it passes, the Court oversees the activities of the National Assembly in at least three ways. The first is by ensuring non-involvement of members of the House, Senate, or committees in the use of appropriations as required by Section 180(6) in accordance with Section 180(7).<sup>95</sup> The second way it acts as overseer of the National Assembly is by passing on the constitutionality of the draft rules of procedure of the House of Representatives, the Senate, and the National Assembly, similar to its power under Section 262 relating to bills, via Section 263.<sup>96</sup> Third, when a bill or organic law bill is being withheld pursuant to Section 175,<sup>97</sup> the Council of Ministers and members of the House of Representatives are prohibited from introducing "a bill or an organic law bill having the same or similar principle as that" being withheld.<sup>98</sup> Where the House or the Senate believes the prohibited conduct has occurred, the President of the House or the President of the Senate shall submit the case to the Court for determination.<sup>99</sup> Where the Court determines the newly introduced bill or organic law bill does have the same or similar principle as that being withheld, such bill shall lapse.<sup>100</sup>

Lastly, the Court exercises its power to oversee the functioning of the National Counter Corruption Commission (NCCC) in two ways. First, the Court was empowered to review the constitutionality of NCCC's provisional regulations which it was to pass

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<sup>94</sup> This power was granted to the Court via the Organic Law of the Political Party Act, art. 65(2) (see, e.g., Decision No. 6/2541).

<sup>95</sup> Thai Const., ch. VI, pt. V, sec. 180(6)-(7).

<sup>96</sup> Thai Const., ch. VIII, pt. II, sec. 263.

<sup>97</sup> Thai Const., ch. VI, pt. V, sec. 175.

<sup>98</sup> Thai Const., ch. VI, pt. V, sec. 177.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

and which were to remain in force until the organic law on counter corruption came into force.<sup>101</sup> Of more lasting significance, the NCCC is required to refer all cases where it has found a failure to comply with the procedures for submission of accounts mandated in Section 292 to the Court for final decision.<sup>102</sup> Second, the Court oversees the functioning of National Assembly is by passing on conformity constitutionally-mandated procedure<sup>103</sup> and regulations for Emergency Decrees.<sup>104</sup>

In addition to its functions directly related to oversight of the National Assembly and its workings, the Court is empowered to exercise authority to uphold the Constitution as it relates to political parties. Political parties' resolutions may be submitted to the Court by party members of the House for determination of the resolutions' constitutionality.<sup>105</sup> The Court also has jurisdiction to hear submissions referred by the president of either the House or Senate regarding the alleged termination of membership of members of either house<sup>106</sup> or the alleged termination of the ministership of a member of the Council of Ministers.<sup>107</sup> In a similar vein, members of the House whose party membership is terminated pursuant to Section 118(8) may challenge their terminations before the Constitutional Court.<sup>108</sup>

The Court is also empowered with a function which does not fit easily into any of the categories utilized in this paper but which relates most fundamentally to the upholding of the Constitution generally. Section 63 prohibits any person from exercising

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<sup>101</sup> Thai Const., ch. XIII, sec. 321.

<sup>102</sup> Thai Const., ch. X, pt. 1, sec. 295.

<sup>103</sup> See, Thai Const., ch. VII, sec. 218.

<sup>104</sup> Thai Const., ch. VII, sec. 219.

<sup>105</sup> Thai Const., ch. III, sec. 47.

<sup>106</sup> Thai Const., ch. VI, pt. I, sec. 96.

<sup>107</sup> Thai Const., ch. VII, sec. 216; cf., Thai Const., ch. VI, pt. I, sec. 96.

<sup>108</sup> Thai Const., ch. VI, pt. II, sec. 118.

the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.<sup>109</sup>

In order to enforce this prohibition, the Prosecutor General is authorized to submit a motion to the Constitutional Court to require the cessation of any activities by people or political parties in violation of this section.<sup>110</sup> The Court's findings cannot prejudice the institution of criminal prosecution of the acts, but, where the perpetrator is a political part, the Court may order its dissolution.<sup>111</sup>

### 3. More Broadly

As explained by Pratoomraj, both sections 198 and 264 can be used to enforce individual rights.<sup>112</sup> Courts may refer constitutional questions related to individual cases, particularly where they form the basis of claims under <sup>113</sup>Section 28, to the Constitutional Court for final adjudication of those issues under Section 264.<sup>114</sup> The parties need not raise the constitutional issue or request a decision on the issue for a court to submit it to the Constitutional Court.<sup>115</sup> Courts may refer any question falling within the ambit of Section 6 (the Thai version of the Supremacy Clause)<sup>116</sup> to the Constitutional Court for final decision. However, if the issue is not essential for decision of the court's case, the Constitutional Court may refuse to accept the submission.<sup>117</sup>

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<sup>109</sup> Thai Const., ch. III, sec. 63.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Pratoomraj, *Konkay Khumkhong Sithi Manutsayachon (Mechanisms for the Protection of Human Rights)*, p. 11-14.

<sup>113</sup> Thai Const., ch. III, sec. 28; see also, Klein, "The Constitution of the Kingdom of Thailand, 1997," p.19 (commenting on the import and utility of Section 28).

<sup>114</sup> Thai Const., ch. VIII, pt. II, sec. 264.

<sup>115</sup> Ibid.

<sup>116</sup> See, Thai Const., ch. I, sec. 6.

<sup>117</sup> Thai Const., ch. VIII, pt. II, sec. 264.

In pursuance of its duty to investigate claims against the government,<sup>118</sup> wherever the Ombudsman determines a question of constitutionality is presented, it is authorized to submit the case with an opinion to the Constitutional Court.<sup>119</sup> It can, therefore, be seen that the power granted to the Court under these sections is not limited to the enforcement of individual rights. Indeed, these means provide a path for a great number of constitutional issues to come before the Court, including some which could come before the Court by other means.

### C. Independence

Numerous provisions in the Constitution can be seen as advancements in the quest for an independent judicial body entrusted with upholding the Constitution. However, to claim the Constitution provides the court with unfettered independence in carrying out its duties<sup>120</sup> goes too far. First, to claim that any court is completely independent is to disregard courts' reliance on the public's and the parties' perception of their legitimacy and authority to ensure compliance with their decisions. Second, the provisions aimed at increasing the independence of the Constitutional Court are deficient in several aspects. For example, the Court is provided its own independent secretariat, and the Office of the Constitutional Court is granted "autonomy in personnel administration, budget and other activities as provided by law."<sup>121</sup> This is definitely a positive sign for the independence of the Court,<sup>122</sup> but it cannot support a claim that the Court is completely independent in this regard because these decisions and actions are to be made "as provided by law." The

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<sup>118</sup> See, Thai Const., ch. VI, pt. VII, sec. 197.

<sup>119</sup> Thai Const., ch. VI, pt. VII, sec. 198.

<sup>120</sup> See, Khwanmuang, "Saan Ratthathammanun (The Constitutional Court)," p. 323.

<sup>121</sup> Thai Const., ch. VIII, pt. II, sec. 270.

<sup>122</sup> Accord, Nanakorn, "Re-making of the Constitution in Thailand," pp. 110-111 (emphasizing this factor as indicative of the Court's independence); Thongdhamachat and Traymad, *Wiwiatthanakan khong Rabop Ratthathammanun Thai (The Evolution of the Thai Constitutional Systems)*, pp. 72-73 (same); Khwanmuang, "Saan Ratthathammanun (The Constitutional Court)," p. 323 (same).

law, of course, is made by political bodies, thus, for example, while specific budgetary allocations may not be influenced by Parliament, the total available can be.

Another constitutional provision which may be cause for concern regarding the Court's independence is Section 252 which requires all judges to swear an oath of loyalty to the King.<sup>123</sup> This is concerning in that it elevates judges' commitment to the King above their commitment to the law and the Constitution. Thus, judges are beholden to the King and might be required to sacrifice the law at His request, should the King so decide. This concern is worsened by the vestment in the King of the ultimate power to appoint and remove judges.<sup>124</sup> While these powers held by the King may be explained as mere formalities, the tremendous amount of deference to the King in Thai society<sup>125</sup> means that the possibility exists that, should he so choose, the King could make this power effective rather than merely formal without facing popular opposition.

Although the ultimate power of removal lies with the King, the Constitution provides the people and the Parliament with a means of removing Constitutional Court judges<sup>126</sup> for "unusual wealthiness indicative of the commission of corruption, malfeasance in office, malfeasance in judicial office or an intentional exercise of power contrary to the provisions of the Constitution or law . . . ."<sup>127</sup> This power could be wielded for political reasons and could work toward undermining the Court's

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<sup>123</sup> See, Thai Const., ch. VIII, pt. I, sec. 252.

<sup>124</sup> Thai Const., ch. VIII, pt. I, sec. 251.

<sup>125</sup> See, "The Modern Monarchy," Website of the Royal Thai Consulate – General: Hong Kong, [http://www.thai-consulate.org.hk/modern\\_monarchy.htm](http://www.thai-consulate.org.hk/modern_monarchy.htm) (discussing the King's role in quelling uprisings). A more recent example is that, according to reports, after speaking with the King, Thaksin – one of the most politically and economically powerful men in Southeast Asia – agreed to step down as Prime Minister. (Thomas Fuller, "Thaksin Steps Down as Leader of Thailand," International Herald Tribune, April 5, 2006, available online at <http://www.ihf.com/articles/2006/04/04/news/thai.php>.)

<sup>126</sup> See, Thai Const., ch. X, pt. III, cf. Thai Const., ch. VIII, pt. II, sec. 260(6).

<sup>127</sup> Thai Const., ch. X, pt. III, sec. 303.



independence.<sup>128</sup> That this type of appointment is typical of supreme or constitutional courts, the US Supreme Court is an example, does not detract from this argument (once again looking to the politicization of appointments to the Supreme Court in the US as an example of this danger). In contrast to this possible cause for concern is the possibility that the qualifications and prohibitions applied to the judges may be insufficient to ensure their independence from political matters. For example, judges can actively engage in not-for-profit organizations or in un-paid, nonpermanent government positions<sup>129</sup> without running afoul of either Section 256 or Section 258. Such activities may be just as, possibly more, influential on a judge's deliberations than some of the proscribed activities. The focus on money and profit may be too narrow in this setting as a means to prevent corruption. Thus, Klein's assertion that "Constitutional Court judges must demonstrate that they are above politics"<sup>130</sup> claims too much in that judges are not required to prove they are apolitical; rather they are required only to show they are not too political in specific ways. Moreover, many of the qualifications, as noted above, do not apply to the seven judges who come from other courts. While this may be mitigated to some extent by whatever qualifications judges appointed to the Supreme Court and the Supreme Administrative Court must meet and the overlap between the qualifications required by Section 256 and the prohibitions mandated by Section 258, there may still be a gap in the requirements which could prove significant in protecting the Court's independence.

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<sup>128</sup> See, Thongdhamachat and Traymad, *Wiwiathanakan khong Rabop Ratthathammanun Thai (The Evolution of the Thai Constitutional Systems)*, pp. 73 (noting the Senate's power to remove judges in this context).

<sup>129</sup> Section 250's provision prohibiting judges from being political officials or holding political office may abate this concern, but such a reading of Section 250 as to prohibit all governmental activity, surely renders the provisions related to current governmental positions in Sections 256 and 258 superfluous and cannot be sustained.

<sup>130</sup> Klein, "The Constitution of the Kingdom of Thailand, 1997," p.19.

Nanakorn posits that the constitutional provision requiring the Court and each judge to produce an opinion in every case it decides was designed “[t]o promote transparency with respect to Court decisions . . . .”<sup>131</sup> This is certainly sensible and could serve as a means of enforcing an increase in the independence of the Court, assuming judges decisions accurately reflected all of the considerations which led to their decisions.

Another possible problem regarding the independence stems from the fact that the judges are appointed for finite terms rather than for life.<sup>132</sup> While re-appointment is prohibited,<sup>133</sup> this does not mean that judges have no incentives for furthering their careers after the expiration of their terms. Therefore the possibility remains that judges could cater to the interests of those in whose hands their future careers rest, be they in politics, government, or elsewhere.<sup>134</sup>

Lastly, some of the provisions regulating the activities of Constitutional Court judges with the apparent aim of increasing the independence of the Court seem to be in tension with the fundamental guarantees embodied in the Constitution. First, Buddhist clergy are prohibited from being elected to the Court.<sup>135</sup> It is difficult to reconcile this prohibition with the freedom of religion and the “full liberty to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief . . . .”<sup>136</sup> Considering that this prohibition does not

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<sup>131</sup> Nanakorn, “Re-making of the Constitution in Thailand,” p. 111.

<sup>132</sup> See, Thai Const., ch. VIII, pt. II, sec. 259 (specifying 9 years as the duration of a term).

<sup>133</sup> Thai Const., ch. VIII, pt. II, sec. 259.

<sup>134</sup> In addition to this concern, establishing the Constitutional Court as, arguably, the most prestigious judicial institution in Thailand and then creating a system for the determination of its composition which includes election from other courts would seemingly politicize those institutions, although this politicization would be of an internal rather than an external nature. This could be seen as a harmful side effect, though not one that would directly influence the independence of the Constitutional Court.

<sup>135</sup> Thai Const., ch. VIII, pt. II, sec. 256(4) (incorporating characteristics mandated disenfranchisement), cf. Thai Const., ch. VI, pt. II, sec. 106(2) (disenfranchising Buddhist clergy).

<sup>136</sup> Thai Const., ch. III, sec. 38.

extend to clergy of other faiths, this also seems to contradict Section 30 of the Constitution which states: “All persons are equal before the law and shall enjoy equal protection under the law.”<sup>137</sup> Also, the various prohibitions on certain kinds of political participation seem at odds with Section 47’s provision that “[a] person shall enjoy the liberty to unite and form a political party for the purpose of making political will of the people and carrying out political activities in fulfillment of such will . . . .”<sup>138</sup> While this is not the place for an in-depth analysis of these tensions and apparent inconsistencies, they are noted as possibly detrimental to the Court institutional integrity, particularly in the eyes of the public, which could lead to discrepancies between what the public believes to be right and what the Constitution states, thus compromising the Court’s effectiveness.

#### **IV. Reality - What It Is and Does**

Thailand’s Constitutional Court has now been extant for about eight years and has developed a rich jurisprudence which is made available to the public on the Court’s website and through various publications,<sup>139</sup> in addition to news sources.<sup>140</sup> Thus, the resources for research into the workings of the Court and its jurisprudence is now available and the opportunity for evaluation ripe. However, such an undertaking cannot be accomplished in a single paper; it is therefore hoped that this effort will spur further research into both the Court’s jurisprudence and its functioning within the framework of the 1997 Constitution and the reforms and principles it embodies. Given this purpose, this section will briefly discuss the Court’s independence as demonstrated by its actions

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<sup>137</sup> Thai Const., ch. III, sec. 30.

<sup>138</sup> Thai Const., ch. III, se. 47.

<sup>139</sup> See, Raksasataya and Klein, *The Constitutional Court of Thailand*, pp. 39-40 (listing various sources and discussing accessibility).

<sup>140</sup> See, e.g., Bangkok Post (numerous articles mentioning or discussing the Court); New York Times (Same).

and as perceived by observers. From that point, the section will briefly address the how, the who, and the what of the Court's cases – how they have come before the Court, who has brought them, and what they've been about. Due to the number of cases the Court has adjudicated and the limited scope of this paper, summary overviews and brief, illustrative examples will be utilized to how cases have come before the Court and who has brought them. What the cases have covered, being a rather broad topic, will, for the most part, be discussed using illustrative examples rather than summary overviews.

### **A. Independence**

In the eyes of some commentators<sup>141</sup> and many citizens,<sup>142</sup> the decision handed down by the Constitutional Court in 2001 in Thaksin's case<sup>143</sup> clearly answered the question of whether the Court enjoyed political independence. Ruling on a Section 295 referral from the NCCC, the Court declined to find that Thaksin had intentionally failed to submit complete and accurate financial records as required by Section 292.<sup>144</sup>

Commentators have made much of the fact that only four judges actually found Thaksin was innocent while four judges held that the case should be dismissed because, according to their reading, "Thaksin was not required under Section 292 to submit any asset and

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<sup>141</sup> See, e.g., Duncan McCargo and Ukrist Pathmanand, *The Thaksinization of Thailand*, (NIAS Press 2005), pp. 15-17.

<sup>142</sup> This is demonstrated by the public reaction to the decision generally and the petitions requiring at least 50,000 signatures which were filed seeking the impeachment of four of the Constitutional Court judges who found in favor of Thaksin. See, Raksataya and Klein, eds., *The Constitutional Court of Thailand*, pp. 74-76.

<sup>143</sup> Decision No. 20/2544.

<sup>144</sup> Ibid. Pasuk and Baker summarize the case in context:

Around a month before the January 2001 election that returned Thaksin Shinawatra as prime minister of Thailand, the National Counter Corruption Commission (NCCC) charged that he had concealed assets on three occasions over 1997-8 when he had been obliged to file statements as a [deputy prime] minister. The amounts involved were 2.4 billion baht, 1.5 billion baht, and 0.6 billion baht. The had been registered in the names of his housekeeper, maid, driver, security guard, and business colleagues. Two of these domestic servants had for some time figured among the top ten holders of shares on the stock exchange. If found guilty, Thaksin faced a ban from politics for five years.

Pasuk Phongpaichit and Chris Baker, *Thaksin: The Business of Politics in Thailand*, (Chiang Mai 2004), pp. 1-2.

liability statements because he had formally assumed and left office before the 1997 Constitution came into effect . . .”,<sup>145</sup> and the seven remaining judges found Thaksin “guilty”.<sup>146</sup> These commentators have described the decision as “confusing,”<sup>147</sup> “curious,”<sup>148</sup> and the result of a “procedural quirk in the manner in which votes were counted by the Court . . . .”<sup>149</sup> The press has blasted the Court’s independence: “When a Constitutional Court acquitted Mr. Thaksin . . . the tenuous logic of its decision seemed . . . to have been influenced by a tidal wave of popular support for the prime minister.”<sup>150</sup> As recently as this year, it was clear the Court’s reputation had suffered in the eyes of the press: “Though the Thai Constitutional Court is supposed to be independent, it is in fact heavily influenced by politics.”<sup>151</sup>

Thaksin’s case definitely affected the public and academic perception of the Court’s independence. While it was the most politically-charged case the Court has adjudicated, and thus probably the most important to study in terms of the degree of the Court’s independence, this stress on one of the Court’s hundreds of decisions seems both disproportionate and unlikely to harm significantly the Court’s reputation in the long term for several reasons. First, the “procedural quirk” in counting the votes for and against does not seem at all out of place to those familiar with legal institutions. The “quirkiness” or “curiosity” to be found in the way the votes were counted depends on how the issues involved are framed. Those who find the Court’s decision out of place

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<sup>145</sup> Klein, *The Constitutional Court of Thailand*, p. 71.

<sup>146</sup> See, e.g., McCargo and Pathmanand, *Thaksinization*, p. 16; Pasuk and Baker, *Thaksin*, p. 5; Raksasataya and Klein, *The Constitutional Court of Thailand*, pp. 71-76. Klein’s account is particularly useful in that it discusses the reasoning of each of the factions into which this case split the Court.

<sup>147</sup> McCargo and Pathmanand, *Thaksinization*, p. 16.

<sup>148</sup> Pasuk and Baker, *Thaksin*, p. 5.

<sup>149</sup> Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 71.

<sup>150</sup> Seth Mydans, “Thai King Uses Influence To Undercut Prime Minister,” *New York Times*, Section 1A; Column 1; Foreign Desk; Pg. 15.

<sup>151</sup> “Let’s Decriminalise Defamation,” Bangkok Post January 8, 2006 Sunday.

frame the relevant question as one of guilt or innocence, thus discounting the votes of the four judges who held Section 295 was inapplicable and expressing wonderment at Thaksin's "acquittal" when seven of the remaining eleven judges found him "guilty".<sup>152</sup> However, the case was not criminal in nature but administrative, even political,<sup>153</sup> so the use of guilt or innocence in the legal sense is misplaced. As correctly understood then, the question was not whether he did it (or, more correctly, didn't do it), but whether he failed to do something the Constitution required him to do. Four judges found he did not intentionally fail to disclose information regarding his personal finances while four found the Constitution did not require him to make such a disclosure in the first place. Thus, when the proper question is asked ("Did he fail to do what the Constitution requires?"), it makes perfect sense to find a majority of eight judges answering "no".

Other reasons exist which mitigate the harm done to the Court's reputation. First, it could be argued that the Court's disposition of the case actually increased its independence by dodging what was described by some as a political attempt at Thaksin.<sup>154</sup> Second, given the immense political power Thaksin wielded at the time, even if the Court's decision can be seen as bowing to that power, it is understandable, even if not justifiable. Thus, the Court might be seen as less than completely independent (which, as noted above, is the best it could be hoped to achieve).

By 2003 Klein could claim that, with a three significant exceptions,<sup>155</sup> "[t]he general public and media have perceived the Court to have made its decision without

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<sup>152</sup> See, e.g., McCargo and Pathmanand, *Thaksinization*, p. 16; Pasuk and Baker, *Thaksin*, p. 5 (citing Klein); Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 71.

<sup>153</sup> The penalty to be imposed for failure to comply with Section 292 is that one is prohibited from running for political office for five years.

<sup>154</sup> See, Pasuk and Baker, *Thaksin*, pp. 2-3.

<sup>155</sup> Klein discusses the case of Deputy Minister of Agriculture Newin Chidchop (Decision No. 36/2542) in depth (pp. 61-64) and also mentions Sanoh's case (p. 77). However, these cases are rarely, if ever, discussed by court-observers since the Thaksin case.



undue political interference or pressure . . . .”<sup>156</sup> However, it has been claimed that since then the Court has been taken “under control” by Thaksin.<sup>157</sup> The only evidence offered for this claim was the appointment of three pro-Thaksin judges upon the conclusion of the terms of four judges who had not been seen as puppets and the election of a judge seen as pro-Thaksin as the President of the Court.<sup>158</sup> This evidence is insufficient to support the conclusion that the Court is now under Thaksin’s thumb. Knowing who is on the Court, while possibly relevant, is insufficient to determine what the Court will do. No evidence of the Court’s actions since those appointments was offered to support this claim, and a review of the Court’s decisions since those appointments does not reveal any significant change in the Court’s jurisprudence,<sup>159</sup> though a deeper analysis may reveal some significant changes. Moreover, even if the claim that the Court was under Thaksin’s thumb was accurate, it is doubtful such influence will persist as a hindrance to the Court’s independence, given the personal nature of the evidence cited in support of this claim,<sup>160</sup> now that Thaksin has stepped down from the position of Prime Minister.<sup>161</sup>

As a final note on the Court’s independence, it should be noted that it is empowered to decide not only strictly legal questions but questions more correctly classified as belonging to the field of political science, such as the proper division of power between constitutional bodies.<sup>162</sup> Thus, it could be said that its job is more

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<sup>156</sup> Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 77.

<sup>157</sup> McCargo and Pathmanand, *Thaksinization*, p. 176.

<sup>158</sup> *Ibid.*, pp. 175-76.

<sup>159</sup> At least ten Section 295 have been referred to the Court since these appointments and all cases have resulted in a finding in accordance with the NCCC’s findings, just like every other case besides Thaksin’s that has come before the Court. Also, the Court’s jurisprudence demonstrates a general deference to governmental institutions and laws both before and after these appointments. In short, it is unclear that these appointments have or will have any significant effect on the Court’s jurisprudence.

<sup>160</sup> Pasuk and Baker, *Thaksin*, 175-76.

<sup>161</sup> See, “Thaksin Bowing Out,” Bangkok Post, April 5, 2006, available online at [www.bangkokpost.com](http://www.bangkokpost.com).

<sup>162</sup> See, Thai Const. ch. VIII, pt. II, sec. 266.

political in nature than most courts, making complete political independence not only practically impossible, but theoretically implausible. It is worth reiteration that no court, since they are all dependent on the will of the people and other governmental bodies for enforcement, exists or operates completely independent of political considerations.

## **B. The Court's Practice**

Through December 29, 2005, the Court had decided 447 cases. In order to gain an overall perspective on what the Court has done since its inception, these cases have been summarized in a chart appended to this paper. This review reveals a plethora of information which cannot be fully digested in a single paper. Rather, this paper provides an overview of the Court's cases and decisions, analyzing some of the more important and interesting lines of cases as well as individual decisions in greater detail. Each topic addressed is worthy of study in greater detail, but the foundation for such work must first be laid.

In gathering the information for this paper, the decisions were reviewed summarily due to the large number of cases and the depth of the issues addressed. For the years 2004 and 2005 and for a few of the cases from the prior years, only Thai summaries (and in a few instances, only the full decisions in Thai) were available for analysis on the Court's website and were thus used. Where available (i.e., for the majority of the Court's decisions through 2003), the official English summaries were relied on for the information condensed into the chart. From the data gathered in the chart, a cursory analysis designed to address three basic questions is made possible. The three questions to be addressed in this section are: 1) How have cases come before the Court? 2) Who has brought these cases? 3) What were these cases about? While the data

included in the chart and the questions asked lead to other questions of great interest and import, those must be left for future writings. In answering the questions asked above, it should be noted that, while there may be a great deal of overlap between the categories thus created,<sup>163</sup> there remains value in analyzing each separately.

These questions will be answered for the purpose of laying the foundation for an analysis of the Court's functional and institutional performance as measured against the roles it was intended to play at its inception, as well as against logic and reason relating to good governance and administration.

### **1. How Cases Come Before the Court**

How a case comes before the Court often influences whether the Court can take jurisdiction and how it ultimately disposes of the case. For example, had the powers of senior police officials to conduct certain types of searches and seizures been challenged under Section 264 rather than under Section 266, the Court would likely have had to address the merits of the claim rather than being able to choose not to accept it by preliminarily ruling that the Minister of Interior was merely a part of a constitutional organ, and thus not an "organ under the Constitution" for purposes of Section 266.<sup>164</sup> Therefore, understanding the paths cases have taken to the Court and how it has dealt with cases when viewed in this context can aid in understanding its jurisprudence as well as its institutional capacity and activity.

The multiplicity of paths to the Court discussed in section III(B) above means that the same question can come up in various setting and through various means. In fact, Decision No. 3-4/2545 exemplifies this very possibility. The Senate had used both

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<sup>163</sup> For example, all cases brought under Section 295 (answering the how) were brought by the NCCC (answering the who).

<sup>164</sup> Decision No. 2/2541.

Section 266 and Section 262 to submit its opinion to the Court that the House of Representatives had not followed constitutional procedure in its handling of The Bill on Operational Immunities of the Organization for the Prohibition of Chemical Weapons.<sup>165</sup> The Court, recognizing the uniformity of issues, though presented under different jurisdictional provisions, combined the cases into a single unit for decision on the merits.<sup>166</sup>

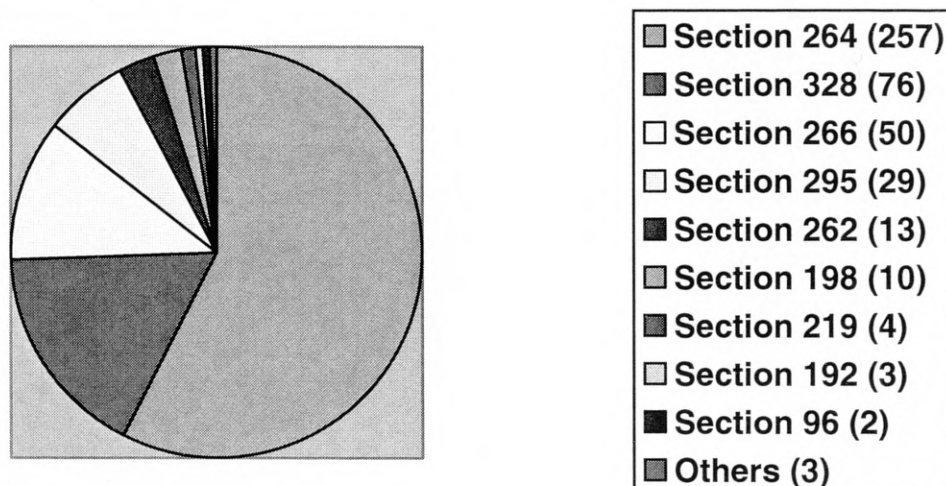
The chart below offers an overall picture of how cases have come before the Court. As it demonstrates, the majority of cases have been sent to the Court under Section 264, meaning they were referred by other courts. It is also worth mentioning that some of the means available for bringing cases before the Court have yet to be utilized. In deciding cases brought under each section, the Court interprets the limits of its jurisdiction under the given section. Additionally, an analysis of the types of jurisdiction the Court has been called upon to exercise is useful in evaluating its functioning and continuing utility. In addition to the chart provided below, a chart listing the decision numbers and years of the cases brought under each section is appended to this paper. Each section which has been utilized to bring at least one case before the Court will be discussed in turn, looking to the Court's interpretation and practice under each.

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<sup>165</sup> Decision No. 3-4/2545.

<sup>166</sup> Ibid.

## How Cases Have Come Before the Court



### a) Section 264<sup>167</sup> Cases - Referrals from Other Courts (257)

As noted above and made clear from the chart, by far the most common way for cases to get to the Court is to be referred by other courts in accordance with Article 264 of the Constitution. This provision allows courts of all levels to refer Constitutional questions to the Constitutional Court. While this mechanism involves referral from another court, this is not properly understood as appellate jurisdiction. Rather, the Court is the court of first instance for all questions involving the interpretation of the Constitution. The scope of its authority is extremely limited – narrowly restricted to constitutional issues, but its decisions within that scope are authoritative, final, and

<sup>167</sup> Thai Const., ch. VIII, pt. II, sec. 264:

In the application of the provisions of any law to any case, if the Court by itself is of the opinion that, or a party to the case raises an objection that, the provisions of such law fall within the provisions of section 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall stay its trial and adjudication of the case and submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision.

In the case where the Constitutional Court is of the opinion that the objection of a party under paragraph one is not essential for decision, the Constitutional Court may refuse to accept the case for consideration.

The decision of the Constitutional Court shall apply to all cases but shall not affect final judgements of the Courts.

binding on all Thai courts and Constitutional bodies of government. Thus, all types and levels of courts<sup>168</sup> can and have referred questions to the Court, from provincial courts of first instance<sup>169</sup> to specialty courts<sup>170</sup> to the Supreme Court.<sup>171</sup> To ensure the Court has access to the information required to adjudicate issues submitted to it, the Constitution grants it “the power to demand documents or relevant evidence from any person . . .” and “to appoint a person or a group of persons to carry out” these duties.<sup>172</sup>

In adjudicating its first case brought under this article, the Court has made clear that Section 264 grants only courts, and not parties coming before them, the right to refer cases to it.<sup>173</sup> In that case, Mrs. Ubon Boonyachalothorn, the defendant in a proceeding before the Nonthaburi Provincial Court, referred two questions to the Court, only the second of which is relevant for present purposes. In essence, Mrs. Ubon Boonyachalothorn had requested that the Nonthaburi Provincial Court submit an issue to the Constitutional Court. However, that court was of the opinion that the issue submitted to it was not of a nature requiring submission to the Constitutional Court and refused to do so. In ruling on the petitioners submissions, the Constitutional Court held that Section 264 granted the courts discretion in deciding whether party submissions were of the kind

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<sup>168</sup> See <http://www.judiciary.go.th/eng/thejudiciary.htm#t6> for an explanation of the structure of the Thai Courts of Justice. See also, Thai Const., ch. VIII (sections regarding the courts); Thongdhamachat and Traymad, *Wiwatthanakan khong Rabop Ratthathammanun Thai (The Evolution of the Thai Constitutional Systems)*, pp. 71-74 (discussing the courts under the Constitution); Phongthaep Thapakanyajana, “Saan Tam Ratthathammanun Chabap Patchuban (The Courts Under the Current Constitution),” in Bunleud Khachayutthadech and Prayong Khongmuang, eds., *Ruam Sara: Ratthathammanun Chabap Prachachon (Collected Works: The People’s Constitution)*, (Bangkok 1998), pp. 308-319 (addressing the courts of justice under the Constitution); Montri Rubsuwan, “Saan Pogkhrang Tam Botbanyad khong Ratthathammanun Chabap Patchuban (The Administrative Courts According to the Provisions of the Current Constitution),” in Bunleud Khachayutthadech and Prayong Khongmuang, eds., *Ruam Sara: Ratthathammanun Chabap Prachachon (Collected Works: The People’s Constitution)*, (Bangkok 1998), pp. 338-45 (discussing the administrative courts under the Constitution).

<sup>169</sup> See, e.g., Decision Nos. 5/2541, 8/2541, 9/2541, etc.

<sup>170</sup> See, e.g., Decision No. 48/2547 (Bangkok Military Court).

<sup>171</sup> See, e.g., Decision Nos. 16/2541, 11/2544, 14/2544, etc.

<sup>172</sup> Thai Const., ch. VIII, pt. II, sec. 265.

<sup>173</sup> See, Decision No. 5/2541.

required by Section 264<sup>174</sup> for referral to the Constitutional Court. Where the Nonthaburi Provincial Court had determined that the issue in this case was not of that kind and refused to refer the case, the Court could have no jurisdiction under Section 264. Therefore, the Court voted unanimously not to accept the submission.<sup>175</sup>

The ramifications of this decision are profound. First, the Court made apparent that it would not serve as an appellate body to review the courts' decisions to refer cases to it. Related to this point, the action taken by the Court in this case sends a message to courts that they are autonomous, at least with respect to the Constitutional Court, in their decisions on whether to refer cases under Section 264. Another effect of the Courts disposition of this case is that it confirmed what commentators already believed (and what a facial reading of Section 264 indicates) – that referral to the Constitutional Court under Section 264 was solely the province of the courts and not of parties before them.

In 1999, the Court decided a case in which it held that notifications issued by non-legislative bodies, the Bank of Thailand in this case, were not “provisions of law” for the purposes of Section 264. Thus, the Court held that it did not have the power to adjudicate on submissions regarding such notifications and dismissed the case.<sup>176</sup> The holding in this case is also significant in that it is the first in a line of decisions by the Court not to hear cases brought under Section 264 relating to notifications issued by what the Court deems to be non-legislative bodies.<sup>177</sup> Including Decision No. 4/2542, the Court has dismissed forty-six applications – more than one tenth of those it received through the end of 2005 (the percentage is higher if only the years 1997-2001 are considered) – on

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<sup>174</sup> See, Thai Const., ch. VIII, pt. II, sec. 264.

<sup>175</sup> Decision No. 5/2541 (see full Thai version for the listing of judges in unanimity).

<sup>176</sup> Decision No. 4/2542.

<sup>177</sup> See, Decision Nos. 5/2542, 9/2542, 10/2542, 12-35/2542, 38-40/2542, 41/2542, 42-43/2542, 14-15/2543, 16-19/2543, 25/2543, 9-10/2544 (refusing to consider one of two issues presented), 27/2544, 50/2544 (refusing to consider one of two issues presented), and 55/2548.

these grounds. It appeared that either courts or litigants had learned their lesson as no such case was referred to the Court from 2002 through most of 2005. However, in Decision No. 55/2548, the Court was once again confronted with a case of this nature and dismissed it as it had the other forty-five cases to come before it. For now, this appears to be an anomaly rather than a re-emergence of these cases.

This line of cases exemplifies Klein's worry that the Court does not "assess the constitutionality of rules and regulations the bureaucracy has created to implement law."<sup>178</sup> The Court's refusal to address these implementation provisions is vital because "[a]ll too often within the Thai context, a law itself may not be unconstitutional; instead the problem lies with the implementing rules and regulations."<sup>179</sup> The Court's continued refusal to adjudicate the constitutionality of these rules by focusing on the body making them rather than the body granting that body power to do so demonstrates a hole in the attempt to ensure the constitutionality of laws in Thailand.

Another important point to be taken from these cases is that the Court gives its decisions precedential value such that, where it finds the issue in the case at hand is identical to that presented in a case it has already adjudicated, it will cite that decision and dismiss the case at hand. While the Court has followed this pattern in numerous instances,<sup>180</sup> it is particularly noteworthy in this context, given the large number of cases presenting similar issues.

Decision Nos. 8/2543 and 9/2543 were both handed down on March 2, 2000 and had both been referred by the Songkhla Provincial Court, but the holdings of each

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<sup>178</sup> Raksasataya and Klein, *The Constitutional Court of Thailand*, p. 36.

<sup>179</sup> Ibid.

<sup>180</sup> See, e.g., Decision No. 10/2541 (dismissing case where issue presented had been addressed and decided in Decision No. 4/2541).



resulted in decisions limiting the Court’s jurisdiction in different ways. In Decision No. 8/2543, the Court found that the petitioner was requesting it to interpret a provision of the Constitution rather than to adjudicate on the constitutionality of the application of law in a given case, as required by Section 264 and thus dismissed the case.<sup>181</sup> It can therefore be seen that the Court does not allow courts or parties to use Section 264’s provisions to put general requests for declarations of unconstitutionality before it but only interprets constitutional provisions properly and specifically presented before it in accordance with the jurisdictional provisions in the Constitution. In Decision No. 9/2543, the Court held that a court’s procedural order allowing a claim of interest without the defendant’s consent did not constitute the application of the provision of any law to this case but merely the act of a juristic person and thus dismissed the case as not properly brought under Section 264.<sup>182</sup> This decision demonstrates that the Court refuses to be an appellate court to review the procedural decisions of other courts. These decisions, taken together, show the Court’s propensity to follow a narrow construction of “the application of the provisions of any law to any case” in establishing, or refusing to establish, its jurisdiction.

On May 2, 2001, the Court issued a decision in which it declined the invitation to determine whether certain provisions of law were in accordance with the Civil Procedure Code. While the Court held there were issues which were properly brought under Section 264, it dismissed those related to the interpretation of the Civil Procedure Code. It can therefore be seen that the Court does not understand Section 264 as granting it the

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<sup>181</sup> Decision No. 8/2543.

<sup>182</sup> Decision No. 9/2543.

power to resolve conflicting laws which are not claimed to contravene the Constitution.<sup>183</sup>

Although outside of this paper's limited scope, there are several extremely interesting questions related to the Court's practice under Section 264 which would provide excellent topics for future research. One such topic would focus on the courts referring cases to the Constitutional Court. Which Courts do so most often? Are there courts that seem reluctant to do so? If so, is this reluctance explainable by institutional and functional differences (less constitutional issues may be presented in the cases that come before courts of different types) or is there a greater reluctance to refer issues to the Court (this could be studied by looking into the practice of courts with similar jurisdictions, such as provincial courts of different provinces)? These questions and their answers would help us better understand the Court's role and its effectiveness, since, as noted above, it is reliant on courts for referral of constitutional issues and is without means of requiring them to do so.

**b) Section 328(2)<sup>184</sup> Cases - Dissolution of Political Parties  
(76) and Section 295<sup>185</sup> Cases – NCCC Referrals (29)**

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<sup>183</sup> Decision No. 16/2544.

<sup>184</sup> Thai Const., ch. XIII, sec. 328, cf. Organic Law of the Political Party Act, art. 65 (mandating the Political Party Registrar submit cases involving political parties' failure to comply with Section 328, thus requiring dissolution, to the Constitutional Court for final order of dissolution).

<sup>185</sup> Thai Const., ch. X, pt. I, sec. 295:

Any person holding a political position who intentionally fails to submit the account showing assets and liabilities and the supporting documents as provided in this Constitution or intentionally submits the same with false statements or conceals the facts which should be revealed shall vacate office as from the date of the expiration of the time limit for the submission under section 292 or as from the date such act is discovered, as the case may be, and such person shall be prohibited from holding any political position for five years as from the date of the vacation of office. When the case under paragraph one occurs, the National Counter Corruption Commission shall refer the matter to the Constitutional Court for further decision, and when the decision of the Constitutional Court is given, the provisions of section 97 shall apply mutatis mutandis.

From a jurisdictional standpoint, these cases are pretty uninteresting. The two sections served as the basis for jurisdiction in 105 cases over the period studied. In none of these cases did the Court find it lacked jurisdiction to decide the issues presented, upholding the submissions of the Political Party Registrar under Section 328 in every instance and upholding those of the NCCC under Section 295 in every instance but one (that being Thaksin's case).

**c) Section 266<sup>186</sup> Cases - Conflict of Powers (50)**

The Court has had the opportunity to define its jurisdiction under this section in a number of cases and has demonstrated a willingness to interpret its jurisdiction fairly narrowly. In the first case in which it did so under this section, Decision No. 2/2541 discussed above, the Court adopted a construction of “organs under the Constitution” which was exclusive of the Ministry of Interior as it was only a part of an organ established *by* the Constitution.<sup>187</sup> The equation of “under” with “by” is significant because “under” could be interpreted to mean governed by, covered by, or in accordance with as opposed to being created or regulated directly by provisions in the Constitution.<sup>188</sup> Had the Court adopted this broader interpretation, it would have had jurisdiction to decide No. 2/2541 as well as other cases which either were not submitted because of that decision or which were not accepted on similar grounds.<sup>189</sup> The Court has

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<sup>186</sup> Thai Const., ch. VIII, pt. II, sec. 266:

In the case where a dispute arises as to the powers and duties of organs under the Constitution, such organs or the President of the National Assembly shall submit a matter together with the opinion to the Constitutional Court for decision.

<sup>187</sup> See, Decision No. 2/2541.

<sup>188</sup> The word in Thai (taam) is translated as under but might be better translated as “according to” or “in accordance with.” The difference is of little import, however, as the ambiguity discussed above is present in Thai as well as in the English translations.

<sup>189</sup> See, e.g., Decision Nos. 58-62/2543 (failing to accept submissions of local administrative organizations because they were not members)

also held that constitutional organs cannot make submissions under Section 266 on behalf of others; rather, the submitting organ must be the involved in the dispute.<sup>190</sup>

Another way in which the Court has limited its jurisdiction under Section 266 is by refusing to act as arbiter for internal disputes within arising within constitutional organs. For example, when the NCCC submitted a request for guidance regarding its fact-finding function, the Court did not accept the application because it found no dispute among various constitutional organs as it read Section 266 to require, only an internal question about how the NCCC was to perform a function the Constitution clearly empowered it to perform.<sup>191</sup> The Court has also refused similar “consultation” submissions seeking resolution of internal matters made by the Election Commission,<sup>192</sup> the State Audit Commission,<sup>193</sup> the Senate,<sup>194</sup> the Council of Ministers,<sup>195</sup> and the Ombudsman.<sup>196</sup> In a similar vein, the Court has refused to give its stamp of approval to opinions held by constitutional organs just to give them legitimacy as opposed to resolving an actual dispute.<sup>197</sup>

The Court also declined an invitation from the NCCC to review the constitutionality of a law passed after the promulgation of the Constitution under the auspices of Section 266.<sup>198</sup> Another way in which the Court has limited its power in the context of Section 266 is by ruling that not all of the powers exercised by constitutional

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<sup>190</sup> See, Decision No. 7/2541.

<sup>191</sup> See, Decision No. 63/2543.

<sup>192</sup> See, Decision Nos. 6/2542, 7/2542, 8/2542.

<sup>193</sup> See, Decision No. 60/2548.

<sup>194</sup> See, Decision No. 43/2546; see also, Decision No. 44/2547.

<sup>195</sup> See, Decision No. 29/2548.

<sup>196</sup> See, e.g., Decision No. 18/2546; Decision No. 19/2546.

<sup>197</sup> See, Decision No. 15/2545.

<sup>198</sup> Decision No. 33/2546.

organs are constitutionally provided and that Section 266 does not authorize it to adjudicate with regard to these non-constitutionally provided powers.<sup>199</sup>

#### **d) Section 262<sup>200</sup> - Advisory Opinions (13)**

During the period studied, the Court never rejected a submission under Section 262 for jurisdictional issues. This may be due to the relatively few cases submitted under this section from 1998-2005 or might be because of the explicitness and narrowness of the section. It provides a means for the legislature to seek advisory opinions from the Court and is explicit in who may bring such cases and in the procedure to be followed. It

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<sup>199</sup> See, Decision No. 29/2548.

<sup>200</sup> Thai Const., ch. VIII, pt. II, sec. 262:

After any bill or organic law bill has been approved by the National Assembly under section 93 or has been reaffirmed by the National Assembly under section 94, before the Prime Minister presents it to the King for signature:

- 1) if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that provisions of the said bill are contrary to or inconsistent with this Constitution or such bill is enacted contrary to the provisions of this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;
- 2) if not less than twenty members of the House of Representatives, senators or members of both Houses are of the opinion that the provisions of the said organic law bill are contrary to or inconsistent with this Constitution or such organic law bill is enacted contrary to this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;
- 3) if the Prime Minister is of the opinion that the provisions of the said bill or organic law bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution, the Prime Minister shall refer such opinion to the Constitutional Court for decision and, without delay, inform the President of the House of Representatives and the President of the Senate thereof.

During the consideration of the Constitutional Court, the Prime Minister shall suspend the proceedings in respect of the promulgation of the bill or organic law bill until the Constitutional Court gives a decision thereon.

If the Constitutional Court decides that the provisions of such bill or organic law bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution and that such provisions of the bill or organic law bill form the essential element thereof, such bill or organic law bill shall lapse.

If the Constitutional Court decides that the provisions of such bill or organic law bill are contrary to or inconsistent with this Constitution otherwise than in the case specified in paragraph three, such conflicting or inconsistent provisions shall lapse and the Prime Minister shall proceed further in accordance with section 93 or section 94, as the case may be.

could therefore be said that the Court's jurisdiction under this section is clearer than under other sections. Such a claim is bolstered by the breadth allowed for reasons to submit a case to the Court – any conceived inconsistency between the bill and the Constitution appears to suffice.

**e) Section 198<sup>201</sup> Cases - Ombudsman (10)**

As is the case in the context of Section 262, the Court has never dismissed or failed to accept an application brought under Section 198. In addition to not having dismissed any Section 198 cases on jurisdictional grounds, the Court has suggested that cases dismissed under other sections could have been brought under Section 198, seemingly encouraging the use of this means of jurisdiction.<sup>202</sup> However, the scarcity of cases brought under this section, particularly given the role commentators believe it can/should play in the protection of individuals' rights as discussed above and the Court's apparent willingness to exercise jurisdiction under this section, raises important questions not answerable within the scope of this paper. What accounts for this scarcity? Do individuals simply not bring claims to the Ombudsman? If not, does the Ombudsman apply procedures which are prohibitive or have internal standards for referral of cases to the Constitutional Court which are overly restrictive?

**f) Section 219<sup>203</sup> Cases (4)**

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<sup>201</sup> Thai Const., ch. VI, pt. VII, sec. 198:

In the case where the Ombudsman is of the opinion that the provisions of the law, rules, regulations or any act of any person under section 197(1) begs the question of the constitutionality, the Ombudsman shall submit the case and the opinion to the Constitutional Court or Administrative Court for decision in accordance with the procedure of the Constitutional Court or the law on the procedure of the Administrative Court, as the case may be.  
The Constitutional Court or Administrative Court, as the case may be, shall decide the case submitted by the Ombudsman under paragraph one without delay.

<sup>202</sup> See, Decision No., 58-62/2543.

<sup>203</sup> Thai Const., ch. VII, sec. 219:

Before the House of Representatives or the Senate approves an Emergency Decree under section 218 paragraph three, members of the House of Representatives or senators of not less than one-

The Court did not dismiss any of the four cases brought under this section for reasons related to jurisdiction. The probable reasons for the lack of jurisprudence on this topic are similar to some of those offered regarding Section 262 – scarcity of cases and the narrowness and explicitness of the Court’s jurisdiction under this section. Cases of this sort can only come up in the context of Emergency Decrees and, even more narrowly, in instances where such decrees are being withheld and a bill with a similar purpose is perceived to have been presented. Therefore, the rarity of submissions under this section is not surprising.

**g) Section 192 Cases (3)**

The Court’s jurisdiction under this section is noteworthy in that Section 192 does not actually confer jurisdiction on the Court. Rather, it only sets a basic requirement for organic laws to be promulgated pursuant to the Constitution. However, some of the organic laws thus created have included provisions granting the Court jurisdiction in certain circumstances. The basis for jurisdiction in all three of the cases the Court has addressed under this section is found in Section 17 (directly or via Section 33) of the

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fifth of the total number of the existing members of each House have the right to submit an opinion to the President of the House of which they are members that the Emergency Decree is not in accordance with section 218 paragraph one, and the President of the House who receives such opinion shall then refer it to the Constitutional Court for decision. After the Constitutional Court has given a decision thereon, it shall notify its decision to the President of the House referring such opinion.

When the President of the House of Representatives or the President of the Senate has received the opinion from members of the House of Representatives or senators under paragraph one, the consideration of such Emergency Decree shall be deferred until the decision of the Constitutional Court under paragraph one has been notified.

In the case where the Constitutional Court decides that any Emergency Decree is not in accordance with section 218 paragraph one, such Emergency Decree shall not have the force of law ab initio.

The decision of the Constitutional Court that an Emergency Decree is not in accordance with section 218 paragraph one must be given by votes of not less than two-thirds of the total number of members of the Constitutional Court.

Organic Act on Political Parties, B.E. 2541 (1998), which allows political party leaders recourse to the Court for review of NCCC actions affecting their parties.<sup>204</sup>

#### **h) Cases Under Section 96 (2) and Other Sections (3)**

These sections, most likely due to their scarcity, have yet to yield much jurisprudence of interest on jurisdictional issues. All of the jurisdictional grants found in these sections (96, 47, 118, and 180) are basically procedural in nature. It is unlikely that they were intended to usher in large numbers of cases before the Court. Therefore, the scarcity of these cases, unlike that in the Section 198 setting for example, should not cause concern in an analysis of the Court's institutional functioning.

#### **i) Sections Yet to be Utilized**

Several possible means of acquiring jurisdiction discussed in section III (B) have yet to be utilized to bring cases before the Court. If these sections were originally intended for regular utilization, this lack could be cause for concern. On the other hand, if these sections were primarily included to cover theoretical gaps or as minor checks on political power, the lack of cases being brought under them would be an indication that things are going as planned. A cursory analysis of these sections indicates the latter is the more accurate description of what is taking place. Given the prerequisites for a case to be brought under Section 63 described above, the lack of any such case is cause for satisfaction rather than concern. That no cases have been brought under Section 142, which allows legislators to challenge the qualifications of members of the Election Commission, barring accusations that Election Commission members are actually not qualified, is also a positive sign. Given the similarity to Section 219, the lack of cases brought under Section 177 is unsurprising, largely for the reasons stated in the discussion

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<sup>204</sup> See, Decision No. 30/2543, Decision No. 12/2546, Decision No. 46/2546.



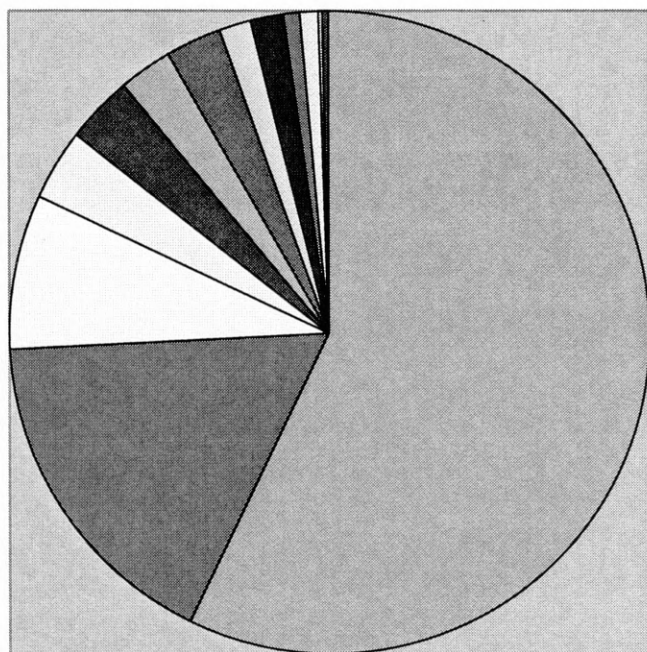
of Section 219. That no cases have been brought under Section 263 is merely an indication that there have been no serious constitutional objections to the rules governing legislative procedure. The last two sections yet to be utilized, Section 321 and Section 324, probably never will be as they granted jurisdiction for the Court to review the provisional rules to be established by the NCCC and the Election Commission prior to the promulgation of organic laws. That no cases were ever brought is also a good sign.

## **2. Who has Brought Cases Before the Court?**

Another way to evaluate the institutional working of the Court is by analyzing who has been bringing cases before it as well as who has been prohibited from doing so or simply not taken the opportunity. This consideration merits attention because narrow construction of standing provisions in the Constitution or organic laws, or reluctance to utilize these, could result in the system's failure to function in accordance with the Constitution by unnecessarily narrowing the group of persons or entities permitted to make submissions to the Court, thus depriving them of the opportunity to make the Court's power of efficacy by putting it to use.

As outlined above, numerous persons and entities are granted standing to submit cases to the Court for adjudication and decision through various constitutional and organic law provisions. In the analysis offered below, these are categorized into three loose groups, essentially distinguished by the functions they play in relation to the Court's mandate to uphold and interpret the Constitution.

## Who Has Brought Cases Before the Court



■	Courts (256)
■	Political Party Registrar (76)
□	NCCC (34)
□	National Assembly (17)
■	Senate (14)
■	Ombudsman (13)
■	House of Representatives (12)
□	Election Commission (8)
■	Provinces and Tambons (7)
■	Party Representatives and Leaders (4)
□	Council of Ministers (4)
■	State Audit Commission (1)
■	Individuals (1)

### a) Constitutional Enforcement Bodies

Various bodies created to enforce the reforms embodied in the Constitution have utilized constitutional provisions which grant them standing to bring cases before the Court in order to 1) clarify their constitutional mandates and to 2) fulfill their constitutional roles. As discussed above, when these bodies have attempted to receive clarification regarding their roles and responsibilities under the Constitution, the Court has refused the invitations, effectively deferring interpretation of constitutionally-granted powers to those bodies except where such powers are disputed by another constitutional organ. However, the Court has taken the opportunity on several occasions to speak to the powers of these bodies in cases where it did find a dispute between constitutional organs under Section 266. Many of these cases were brought before the Court early on and

involved elections and various issues related to them and are usefully summarized and analyzed by Klein.<sup>205</sup>

More relevant for present purposes than what these cases were about is who brought them. Thus, the Court has heard and adjudicated on cases brought by the NCCC,<sup>206</sup> the Election Commission,<sup>207</sup> and the Ombudsman.<sup>208</sup> While the Court did not accept the application of the State Audit Commission in a 2005 case, it was not because it lacked standing under Section 266.<sup>209</sup> The second reason constitutional enforcement bodies have submitted cases to the Court is to comply with their duties as provided in the Constitution. Thus, the NCCC,<sup>210</sup> Political Party Registrar,<sup>211</sup> and the Ombudsman<sup>212</sup> have all brought cases before the Court in pursuance of their constitutional duties. While the who rather than the what is the relevant consideration here, it is worth noting that Klein also addressed the cases which had been brought by the NCCC regarding failure to comply with the reporting requirements of Section 292 in accordance with its standing under Section 295.<sup>213</sup>

The most glaring omission from these lists is the National Human Rights Commission (NHRC). Although it has never attempted to bring a case under Section 266, there appears to be nothing to bar it from doing so, should a dispute arise between it and another constitutional organ. The reason for its exclusion from the second list is more

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<sup>205</sup> Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, pp. 46-59.

<sup>206</sup> See, Decision Nos. 2/2546 and 36/2547.

<sup>207</sup> See, Decision Nos. 3/2541, 15/2541, 13/2543, 52/2546.

<sup>208</sup> See, Decision No. 20/2546.

<sup>209</sup> See, Decision No. 60/2548 (refusing the application where the Court found no dispute).

<sup>210</sup> See, Thai Const., ch. X, pt. I, sec. 295.

<sup>211</sup> See, Thai Const., ch. XIII, sec. 328, cf. Organic Law of the Political Party Act, art. 65.

<sup>212</sup> See, Thai Const., ch. VI, pt. VII, sec. 198.

<sup>213</sup> Raksasataya and Klein, eds., *The Constitutional Court of Thailand*, pp. 59-76.

clear – it is not empowered to bring cases before the Court.<sup>214</sup> Its powers are primarily of investigation, reference, and recommendation.<sup>215</sup> Thus, while disappointing for those who would like to see the NHRC play a more influential role in Thai governance and adjudication, its omission from the above lists cannot properly be understood as an institutional failure as judged by the Constitution and organic laws made pursuant thereto nor of the Constitutional Court.

#### **b) Governmental/Political Bodies**

Numerous legislative, political, and other bodies have been heard by the Court and received decisions from the Court addressing widely varying constitutional issues. As shown in the chart at the beginning of Section IV(B)(2), these groups include the National Assembly, both legislative houses, courts of all levels and types, sub-national governmental bodies, political party leaders, and party members.<sup>216</sup> This diversity suggests compliance with the desire apparent in the Constitution to grant numerous bodies access to authoritative interpretation regarding the duties of and relationships between constitutional organs as well as rights and means of compliance with them, as embodied in the Constitution.

#### **c) Individuals**

“There is no right of direct fundamental rights petition to the Constitutional Court.”<sup>217</sup> In fact, there is no means for individuals to have any claims heard by the Court. However, as several writers have pointed out,<sup>218</sup> individuals may have their cases heard by the Court if either a court refers a constitutional issue via Section 264 or the

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<sup>214</sup> Harding, “Thailand’s Reforms,” p. 99.

<sup>215</sup> Ibid., 98-99.

<sup>216</sup> See also, Table 3 in the appendix.

<sup>217</sup> Harding, “Thailand’s Reforms,” p. 96.

<sup>218</sup> Pramootraj, Harding (noting only the first method), etc.

Ombudsman brings a case on the individual's behalf under Section 198. Mareike Woermer, in the preface to the booklet authored by Pratoomraj which had for its purpose the enabling "of more [Thai] citizens to actively seek protection of their rights," listed the Constitutional Court as first among bodies offering such protection.<sup>219</sup> However, in Decision No. 5/2541, described above, the Court made clear that Section 264 does not grant individuals the requisite standing to come before it; rather, the courts must do so on their behalf.<sup>220</sup> While no case has presented the issue to date, it seems likely the Court would also bar direct petitions from individuals under Section 198 and give deference to the Ombudsman in deciding which cases merited submission.

When judged by the intentions codified in the Constitution, therefore, the lack of acceptance of individuals' petitions should not cause alarm. Of course, students of the Court and of political science are not so limited. While the Court may be fulfilling its constitutional functions in this regard, there is much room for argument regarding whether it is protecting individuals' rights under the Constitution effectively. As can be seen from Table 4 in the appendix, courts of many levels and types have referred cases to the Court. The administrative courts have sent an especially high number of cases to the Court in recent years – 78 total for the years 2004-2005. This constitutes over half (78 of 147) of the Court's caseload for that period. It remains to be seen whether this is an anomaly or the beginning of a trend. On the other hand, not a single case was referred to the Court by any of the juvenile or family courts. This is particularly interesting given the number of constitutional provisions which clearly bear on issues adjudicated in those

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<sup>219</sup> Pratoomraj, *Konkay Khumkhong Sitthi Manutsayachon (Mechanisms for the Protection of Human Rights)*, p. i.

<sup>220</sup> See, Decision No. 5/2541 (holding individuals have no enforceable right to have their cases heard by the Court under Section 264).

courts.<sup>221</sup> While numerous courts have referred constitutional issues raised by individuals and the Ombudsman has done so on occasion, one is left to wonder whether this is enough to safeguard the individual rights as codified in the Constitution.

### **3. What Kinds of Cases has the Court Heard? How has It Decided Them?**

The overviews of the Court's jurisdiction and those who have standing to bring cases before it demonstrates that the Court hears a broad range of cases. Compared to a supreme court in a common law structure, its jurisdiction is certainly narrower in respect to legal cases as it is only empowered to decide those relating to the Constitution. However, its jurisdiction is broader because not all of the cases that come before it, though related to the Constitution, are not strictly legal in character. Section 266 cases, regarding the powers and duties of constitutional organs, serve as an obvious example. The Court's structure – including experts in the field of political science – further supports the conclusion that the Court is intended to hear and decide not only legal claims but also claims regarding political structure and governance under the 1997 Constitution.

To say that the array of cases presented to the Court is narrower than that of some courts is not to say it is narrow. Indeed, given the length of the 1997 Constitution and the breadth of issues it touches, one would expect the Court to have dealt with varying and diverse cases. A review of the Court's decisions in its first eight calendar years of work demonstrates that such an expectation has been met. Due to the large body of jurisprudence developed by the Court during this period, a few of the more dominant or particularly interesting bodies of case law will be dealt with in order to illustrate this

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<sup>221</sup> In the juvenile context, many of the due process and liberty protections could apply. Pertaining to the family, Thai Const., ch. III, sec. 34, dealing with family and privacy rights, is an obvious possibility.

diversity and to give a feeling for what the Court has done. Although an exhaustive detailing of cases is beyond the scope of this work, it is hoped that the analysis and descriptions provided will spur future interest and research on the Court's functioning and jurisprudence.

#### **a) Human Rights**

In order to fulfill its mandate in this area, the Court necessarily employs the power of judicial review. Overall, the Constitutional Court has been fairly reluctant to find laws, especially Emergency Decrees and laws purporting to regulate the economy, unconstitutional. This should not be surprising, given that most courts with similar powers of judicial review tend to show deference to legislative bodies and their decisions when faced with similar problems. Another explanation is that legislatures can be expected to be aware of the Constitution and even to understand it in some depth. Thus, it is likely that most of what they do will be in concurrence with it.

Cases relating to human rights issues are typically brought before the Court either by submissions from other courts under Section 264 or by submissions from the Ombudsman under Section 198. Although the latter, as discussed above, have been brought relatively rarely (ten cases in eight years, making up less than two and a half percent of the Court's docket), the decisions that have been rendered in these cases have demonstrated that it can be an effective means of safeguarding individual rights. The Court found constitutional violations in four of the ten cases submitted under Section 198.<sup>222</sup> Three of these ten cases, all of which were decided in 2003, have involved

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<sup>222</sup> Decision Nos. 24/2543, 21/2546, 24/2546, and 45/2546.

allegations of discrimination on the basis of sex,<sup>223</sup> with the Court finding violations in two of them. In No. 21/2546 the Court held that women could not be required to take the names of their husbands upon marriage.<sup>224</sup> Later in 2003, the Court held that section 20(1) of the Election of Municipal Assembly Members Act, B.E. 2482 (1939), as amended by the Election of Municipal Assembly Members Act (No. 9), B.E. 2538 (1995) was unconstitutional insofar as it required candidates with foreign fathers to requirements in addition to those required of other candidates, thus resulting in discriminatory treatment in violation of Section 30 of the Constitution.<sup>225</sup>

The result in the remaining case may not be surprising to those familiar with the nature of tourism and the understandable disdain felt by some Thais for foreign men whose primary interest in Thailand is its women (such men are commonly referred to by Thais as Khii Nog, meaning bird poop). The Court reasoned that the discriminatory treatment did not result in the complete prevention of foreign men married to Thai women from attaining nationality, since they could apply for it under other provisions of the law. Therefore, according to the Court, the difference in treatment - allowing foreign women married to Thai men a less burdensome way to become Thai nationals than that available to foreign men married to Thai women – could not be deemed to be unjust discrimination on the basis of gender in contravention of Section 30 of the Constitution.<sup>226</sup> The reasoning adopted in this case seems rather difficult to square with that offered by the Court in the case regarding qualifications of candidates discussed in

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<sup>223</sup> Decision Nos. 21/2546 (constitutionality of requirement that married women take husband's names), 37/2546 (constitutionality of granting nationality to foreign women marrying Thai men but not foreign men marrying Thai women), 45/2546 (constitutionality of election law holding candidates with foreign fathers to higher standards).

<sup>224</sup> See, Decision Nos. 21/2546.

<sup>225</sup> Decision No. 45/2546.

<sup>226</sup> Decision No. 37/2545.



the preceding paragraph. These might be cases where Thai custom might help explain the outcomes better than the Court's reasoning. In contrast to the disdain felt for foreign men who come to Thailand to womanize, the offspring of biracial couples (typically referred to as Luug Khrung) – especially those whose physical appearance is closer to that of Caucasians – are thought of as good looking and can be seen throughout the ranks of Thai actors and singers. The Court's decisions, while legally difficult to square with one another, make perfect sense when judged by the cultural norms disfavoring foreign men marrying Thai women while favoring (at least, certainly not disfavoring) the offspring of such relationships.

Three of the cases which did not result in a finding of unconstitutionality involved laws purported to regulate commerce.<sup>227</sup> One of the other cases which did not result in a finding of unconstitutionality does give cause for concern to those interested in human rights. In No. 16/2545, the Court found no violation of the Constitution's prohibition against "unjust discrimination against a person on the grounds of . . . physical or health condition"<sup>228</sup> where two applicants for the examinations for the selection and recruitment of judicial official were denied due to polio-related health problems.<sup>229</sup> The Court's reasoning that judges were sometimes required to do things which might prove difficult for these two applicants left much to be desired by those seeking protection against discrimination in employment decisions. If the duties of a judge are so physically demanding as to justify discrimination on the grounds of physical conditions, bringing

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<sup>227</sup> Decision Nos. 33/2544 (involving an Emergency Decree regulating receiverships), 64/2547 (Emergency Decree relating to bankruptcy), and 32/2548 (involving a tax exemption for telecommunications).

<sup>228</sup> Thai Const., ch. III, sec. 30.

<sup>229</sup> Decision No. 16/2545.

the case within the exceptions provided by Section 29,<sup>230</sup> what hope is left for police officers, doctors, nurses, lawyers, etc., whose jobs are at least as (or considerably more) physically demanding?

Given the reasoning adopted by the Court in No. 16/2545 case, the outcome in a case decided later in 2003 referred by the Central Administrative Court under Section 264 was not surprising, even if disappointing. In that case, the Court found that preventing a man with physical disabilities from being eligible for the state attorney's selection examination fell within the exceptions provided in Section 29 of the Constitution.<sup>231</sup> The reasoning adopted in this case is even more foreboding than that adopted in Decision No. 16/2545 because the Court constitutionally justifies the practice as opposed to finding that it is simply not constitutionally prohibited. The text of Section 29 does not mandate such an interpretation, but the Court has been wont to grant a large degree of deference to governmental policies or regulations in what is to be considered "necessary."<sup>232</sup>

In a case where a Buddhist monk was ousted from his position as a member of a local Sukhapibal Committee on the grounds that he was a monk, in accordance with a local law (which apparently mirrored Section 106(2) of the 1997 Constitution in this regard), the Court relied once again on Section 29 to hold that there was no violation of

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<sup>230</sup> Thai Const., ch. III, sec. 29 provides:

The restriction of such rights and liberties as recognized by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorizing its enactment shall also be mentioned therein. The provisions of paragraph one and paragraph two shall apply *mutatis mutandis* to rules or regulations issued by virtue of the provisions of the law.

<sup>231</sup> See, e.g., Decision No. 16/2545 (discussed above).

<sup>232</sup> See, e.g., Decision No. 3/2546 (holding that barring recovery of benefits related to childbirth from employer for pregnant employees who failed to bring claims within one year was necessary).

the Constitution, despite Section 38's<sup>233</sup> proclamation of religious liberty. Roughly three years later, the Court held that peaceful protests could be proscribed by law in under certain circumstances.<sup>234</sup>

There are at least three types of cases falling under the human rights heading which have been presented to the Court on several occasions. These cases relate to criminal law and the rights of accused persons, drug-related laws, and laws prohibiting or regulating alcohol production and consumption. The first of these sets of cases has been the most numerous – no less than ten cases related to criminal proceedings and due process concerns have been submitted to the Court. In each of these cases, the Court has either simply dismissed the application<sup>235</sup> or upheld the law (normally the application of a provision of a code of procedure) against the constitutional challenge.<sup>236</sup> The Court has also upheld the ability of courts to require fees of parties in civil cases.<sup>237</sup>

The Court has dealt with laws related to drugs on at least four occasions and has upheld the laws against constitutional challenges each time. In so doing, the Court has upheld the ability of the state to assume intent to sell from possession of relatively large quantities of drugs,<sup>238</sup> harsher penalties for drug dealers who are government officials,<sup>239</sup> and the taking of suspecting drug money pending trial.<sup>240</sup>

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<sup>233</sup> Thai Const., ch. III, sec. 38.

<sup>234</sup> See, Decision No. 62/2545.

<sup>235</sup> See, Decision Nos. 2/2541 (dismissing for lack of standing); 5/2541 (same); 1/2543 (dismissing as moot); 3/2544 (same); 16/2546 (dismissing because the application of law claimed to violate the Constitution was found to be unrelated to the provision of the Constitution it was claimed to violate).

<sup>236</sup> See, Decision Nos. 16/2541 (upholding denial of appeal against constitutional challenge); 17/2546 (upholding limitation on defendant's ability to compel discovery from prosecutor – finding no violation in reasoning similar to that employed in 16/2541 to justify dismissal); 48/2547 (upholding prosecutorial discretion in choosing which cases he/she pursues and dismisses); 58/2547 (denying challenge regarding right of appeal).

<sup>237</sup> See, Decision No. 61/2548.

<sup>238</sup> Decision No. 11/2544.

<sup>239</sup> Decision No. 26/2546.

<sup>240</sup> Decision No. 27/2546 and Decision No. 28/2546.

In 2003, the Court held that regulating the sale of liquor through the Spirits Act did not violate the numerous provisions of the Constitution it was claimed to in a submission to the Court.<sup>241</sup> The following year, however, it found that such a requirement was prohibited by Section 46 of the Constitution (relating to cultural rights) in the context of a case submitted to it involving a customary alcoholic rice drink.<sup>242</sup> Possibly motivated by the success of this case, seven more cases were submitted to the Court challenging the Act under various constitutional provisions.<sup>243</sup> None of these challenges was successful.

Thus it can be seen that numerous human rights issues have been presented to the Court and relatively few have been met with a commitment to the protection of individual rights the Court was hoped to provide. Although many provisions of the Constitution have relied upon in submissions to the Court, and it has issued decisions regarding many of them, there remain many which have yet to be interpreted by the Court.<sup>244</sup>

## **b) Powers and Procedure**

As shown in the chart appended to this paper, the Court has had fifty cases (roughly one in nine of those which have come before it) submitted to it under Section 266 and has adjudicated a number of those, providing important decisions regarding the functioning of constitutional organs under the 1997 Constitution. The Court has also made important decisions related to legislative (and other governmental actors') procedure, enactments, and powers. Two of these cases dealt with treaty-making. In No.

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<sup>241</sup> Decision 6/2546.

<sup>242</sup> Decision No. 25/2547.

<sup>243</sup> Decision Nos. 52-53/2547, 36-39/2548, and 54/2548.

<sup>244</sup> Baker & McKenzie, "Time is Ripe to Protect Right to Privacy," Bangkok Post March 17, 2003 ("Although the current constitution contains certain provisions assuring rights of Thai citizens to privacy, there is neither a Thai Supreme Court decision nor a Thai Constitutional Court decision interpreting these provisions and which may be used as a guideline.")

11/2542, the Court concluded that correspondence promising repayment of IMF loans did not constitute a treaty, and thus did not require legislative approval.<sup>245</sup> On the other hand, the Court held that the Convention on Biological Diversity which would require approval by the National Assembly.<sup>246</sup>

In addition to the Court's adjudication regarding powers of constitutional organ, it has decided twenty-nine cases under Section 295, finding the NCCC's determination to have been correct in all but one of these. The Court has also approved all seventy-six of the submissions brought to it by the Political Party Registrar relating to the dissolution of political parties. Cases falling in these latter two categories have therefore accounted for well over twenty percent (105 of 447) of the Court's cases in its first eight years. Given the rubber stamp nature of the Court's adjudication in all but one of these cases,<sup>247</sup> it might justifiably be doubted that this is the best use of the Court's resources. True, this is a constitutional issue in that it relates directly to a provision of the Constitution, but it is really more a procedural or administrative undertaking than an adjudicatory venture.

## **V. Looking Ahead**

The above discussion of the Court's actions during its first eight years provides evidence that the Court has fulfilled some of the expectations and intended roles attributed to it from its establishment while less than fully living up to them in other areas. However, even in these areas, the Court has demonstrated the capability to fulfill the roles, even if the judicial will is sometimes (even most of the time) lacking.

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<sup>245</sup> Decision No. 11/2542.

<sup>246</sup> Decision No. 33/2543.

<sup>247</sup> While dissents are not unheard of in these cases, they are the exception rather than the rule. Additionally, the only case not to have been rubber-stamped is also generally considered to have been the most deleterious to the Court's reputation.

This paper also demonstrates the need for further research into the functioning of those bodies, including the Court, in pursuance of the goals set out in the Constitution. Important questions, such as why the Ombudsman has brought so few cases and why the Administrative Courts have recently started to refer so many, remain to be researched and answered. The need for more thorough research into the Court's jurisprudence is also made manifest through the overview provided. For example, following the Court's jurisprudence chronologically on specific constitutional provisions, as opposed to thematically, could produce much useful information relative to the Court's success or failure to uphold the Constitution.

In sum, the Court has yet to fulfill its constitutionally-mandated roles completely, but its actions demonstrate a vast improvement over the previous systems. More research is required to explain the shortcomings and to suggest and work through ways of overcoming them.

Table 1: Summary of Cases<sup>1</sup>

Case <sup>2</sup>	Applicant	Authority <sup>3</sup>	Section in Question <sup>4</sup>	Type	Result
1/2541	Pres of House	219	218	Emergency decrees (ED's) re economy constitutional?	Yes
2/2541	Minister of Interior	266	238	Searches by superior police	NA
3/2541	Election Commission	266	145(3); 144(2)	EC or Civil Court had jur over matter re 12 member?	EC
4/2541	Pres of Natl Assembly	266	285(5)	Did shorter term limits for local authorities apply to those elected prior to Const?	Yes
5/2541	Mrs. Ubon Boonyachalothorn	264	241(4)	D can compel discovery in criminal cases? D can submit to CC? (court has to)	NA
6/2541	Political Party Registrar	328(2) <sup>5</sup>	328(2)	Dissolve Muanchon Party?	Yes
7/2541	Tambon Tha Kam	266	282; 283(2)	Powers of exec to dissolve local legislature (term 4/5)	NA

<sup>1</sup> Cases of the Constitutional Court of the Kingdom of Thailand from 1998-2005. The information on the table is taken from summaries and decisions as posted on the Court's website (<http://www.concourt.or.th/>). For the years 2004-2005, the cases are only available in Thai, and even this limited availability is not complete for these two years, but summaries or decisions are available online for the vast majority of the cases for these years and are thus included for consideration in this chart.

<sup>2</sup> The citations indicate the number of the decision of the Court for the given year. Years are according to the Thai Calendar (543 years ahead of the Christian calendar).

<sup>3</sup> The section of the 1997 Constitution of the Kingdom of Thailand under which the Court derives its authority or jurisdiction for the particular case or under which such authority is claimed by petitioner.

<sup>4</sup> This refers to the section of the Constitution for which an interpretation is being sought.

<sup>5</sup> Cases listed in this chart as arising under Section 328 actually arise under the Organic Law of the Political Parties Act, sec. 65(2) made pursuant to Section 323 and in accordance with Section 328.

8/2541	Satun Provincial Court <sup>6</sup>	264	70(3); 4-6, 26-28, 30, 48?	Due Process	NA
9/2541	Suphan Buri Provincial Court	264	145(3), 144(2)	Law re qualifications of candidates const?	Yes
10/2541	Tambon Tha Kam	266 <sup>7</sup>	285(5)	interp “members of a local assembly” (term 4/5)	NA
11/2541	Nonthaburi Provincial Court	264	233	Number of signatures for SC quorum; Lease of Land Act Const?	Dsmd
12/2541	Civil Court	264	26, 27, 29	5(1) of Act on Negligence Liabilities of Officials Const?	Yes
13-14/2541	Presidents of Senate and House	262		Enactment of Cooperatives and State Enterprise Labour Relations Const? (Additions = amendments?)	No
15/2541	Election Commission	266	68	EC has power to specify penalties for failure to vote?	No
16/2541	Supreme Court	264	272, 26-28	220 of Crim Pro Code Const (rt to appeal)?	Yes
1/2542	12 Reps (Prachakorn Thai Party)	47(3,4)	118(8)	Can party oust elected members from House?	No
2/2542	Political Party Registrar	328(2)	328(2)	Dissolve Patiroop Party?	Yes
3/2542	Pres of House	262(1)(1)	224	Enactment of Bankruptcy Bill Const? (IMF compel?)	Yes
4/2542	Songkhla Provincial Court	264	264	Interest rates notification const?	Dsmd

<sup>6</sup> See <http://www.judiciary.go.th/eng/thejudiciary.htm#t6> for an explanation of the structure of the Thai Courts of Justice.

<sup>7</sup> Neither the summary nor the full text of the decision available online mention the specific article under which the case was brought, and it is not clear from either which article would have given jurisdiction to the Court. However, the Court found the question asked addressed the same issue as 4/2541. Also, the case was brought by a municipality (a “tambon” in this instance), similar to 7/2541 (which was also not accepted for consideration). Thus, article 266 seems the most likely possibility.



5/2542	Bangkok South Civil Court	264	30	Bank of Thailand notices law? (No); Disc? (No)	Dsmd
6/2542	EC	266	145(1)(2) 145(1)(6) 144(1)	scope of EC's powers (what and when) over other govt organs	Dsmd
7/2542	EC	266	68(3), 105(2)	Voting rights of an eligible voter	Dsmd
8/2542	EC	266	315	Qualifications in transition	Dsmd
9/2542	Lom Sak Provincial Court	264	30	Notification violated Act? (Not a const. Q); other notification not law (4/2542)	Dsmd
10/2542	Civil Court	264	30	Bank of Thailand Notifications	Dsmd
11/2542	Pres of Natl Assembly	266	224	Letters of intent to IMF = treaty?	No
12-35/2542	Lom Sak Provincial Court	264	30	Bank of Thailand Notifications	Dsmd
36/2542	Pres of House	266	216(4)	Suspended sentence of imprisonment sufficient to terminate ministership?	No
37/2542	Pres of Senate	262(2)	30, 45, 86	Const? 39 of Organic Bill on Parliamentary Ombudsman (exempting that office from labor regulations and laws)	Yes
38-40/2542	Bangkok South Civil Court; Suphan Buri Provincial Court	264	30?	Bank of Thailand Notifications	Dsmd
41/2542	Bangkok South Civil Court	264	57	Kasikorn Thai Bank Notification	Dsmd
42-43/2542	Sikhio Provincial Court	264	30	Bank of Thailand notices	Dsmd
44/2542	Nakhon Sawan District Court	264	29, 38	Sukhapibal Act const? (Dqed for office by becoming a monk is ok)	Yes

45/2542	Political Party Registrar	328(2)	328(2)	Dissolve Maharadthipat Party?	Yes
46/2542	Political Party Registrar	328(2)	328(2)	Dissolve Chivit Mai Party?	Yes
47/2542	Political Party Registrar	328(2)	328(2)	Dissolve Chatniyom Party?	Yes
48/2542	Pres of Senate	262(1)	42, 48, 50	Rubber Control Bill (state control over rubber) const?	Yes
49/2542	Pres of House	96	315(2), 323	Membership of Rep dqed on lower academic quals?	Yes
50/2542	Pres of House	262(1)	30, 87	State Enterprise Corporatisation Bill const?	Yes
51-52/2542	Pres of Natl Assembly	266	315	EC's resolution on quals of sen/house candidates ok?	No
53/2542	Senate	266	125, 315	Quals for senate candidacy have to meet new const (as EC says)?	Yes
54/2542	Pres of Natl Assembly	266	277	PM's submission of list w/o prior approval of senate ok?	Yes
1/2543	Bangkok South Criminal Court	264	4, 5, 26-28, 30-33, 70, 241, 243	16 and 120 of Crim Pro Code Const? Human dignity (bring it up in ct of justice)	Yes
2/2543	Criminal Court	264	4, 5, 26-28, 30-33, 70, 241, 243	16 and 120 of Crim Pro Code Const? Human dignity (bring it up in ct of justice)	Dsmnd
3/2543	Political Party's Registrar	328(2)	328(2)	Dissolve Chat Samakkee Party?	Yes
4/2543	Political Party's Registrar	328(2)	328(2)	Dissolve Thai Kaona Party? "180 days" = 6 mos? (No)	Yes
5/2543	Pres of Natl Assembly	266	109(11)	EC's ruling on prohibited characteristics of candidates dqing 28 positions const?	No for 27, yes for 1

6/2543	EC	266	68	Royalty have to vote?	No
7/2543	Civil Court	264	57, 60	Commercial Banking Act (giving Bank of Thailand power on interest and discounts w/o participation of the people) const?	Yes
8/2543	Songkhla Provincial Court	264	57	Request by ind for interp of 57 (as opposed to claim of unconstitutionality)	Dsmd
9/2543	Songkla Provincial Court	264	50, 57	Bank of Thailand's acts proper?	Dsmd
10/2543	NCCC	295	292	Failure to submit asset info - duty and intentional breach?	Yes
11/2543	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes
12/2543	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes
13/2543	EC	266		Powers/duties of EC and Courts of Justice - ct's preventing of withdrawal of candidacy bec late ok?	Yes
14-15/2543	Phra Nakhon Si Ayutthaya Provincial Court	264	30, 50, 60	PM's order re shrimp farming const?	Dsmd
16-19/2543	Suphan Buri Provincial Court	264	30, 50, 60	ditto (PM not organ exercising legislative power)	Dsmd
20/2543	Pres of Natl Assembly	266	131, 168, 121, 315	Powers/duties Senate - need 200 to perform duties? can old fill in till new come?	Yes; No
21/2543	Pres of Senate	266	275	court rules bill (not covering all judicial functions) const?	Yes

22/2543	Pres of Senate	262	209	partnerships/shares bill (allowing “by law” ministers to maintain more shares than Const allows by transferring to a juristic person) const?	Yes
23/2543	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes
24/2543	Ombudsman	198	29, 124-126	EC’s dq of candidate resulting from multiple elections const?	No
25/2543	Lampang Provincial Court	264		Similar to 24/2543, but referred by court on diff grounds - EC’s reg (not a body exercising leg power)	Dsmd
26/2543	Council of Ministers	266	159, 90	Can Council of Ministers open Natl Assembly w/o 200 senators? If not, when is first sitting to be? Can House sit, regardless?	Yes, moot, yes
27/2543	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes
28/2543	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes
29/2543	Political Party Registrar	328(2)	328(2)	Dissolve Dharmarat Party?	Yes
30/2543	Founder Numchai Party	192 <sup>8</sup>	33?	Political party registrar’s refusal to recognize party const?	Yes
31/2543	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes

<sup>8</sup> Actually, the provision granting jurisdiction is found in the enacting legislation (Organic Act on Political Parties, B.E. 2541 (1998)) made pursuant to this article.

32/2543	Pres of Natl Assembly	266	180	Extraordinary Committee could add to Annual Appropriation Bill?	No
33/2543	Council of Ministers	266	224	Convention on Biological Diversity a treaty requiring Natl Assembly approval?	Yes
34-53/2543	Taling Chan District Court; Thon Buri Civil Court	264	30	286 of civ pro code (granting cts discretion in exempting moneys from legal executions) const?	Yes
54-55/2543	Pres of Senate	262	3, 29, 30, 233, 234, 271	bill on elections (giving EC power to revoke candidacy rts for dishonesty and annul bad party votes) const?	Yes
56/2543	Pres of House	262	29, 30, 32	bill on elections (requiring reps from constituency elections appointed PM had to pay for election of replacement) const?	Yes
57/2543	Member of House	118	47	Membership in House terminated by party const? (Already terminated by royal decree - moot)	Dsmnd
58-62/2543	Leaders for tambons Kantararom, Koh Pangun, and Bantai and Provincial leaders for Chiang Mai and Buriram	266	78, 87, 88, 282, 283, 284	Act on Provincial Admin Org (empowering province to tax oil and tobacco retailers) const?	NA
63/2543	NCCC	266		Powers/duties relating to finance bills and PM and Minister of Finance	NA
64/2543	Political Party Registrar	328(2)	328(2)	Dissolve Ruk Chat Party?	Yes
1/2544	Political Party Registrar	328(2)	328(2)	Dissolve Pracha Sangkom Party?	Yes
2/2544	Political Party Registrar	328(2)	328(2)	Dissolve Thai Pattana Party?	Yes

3/2544	Chon Buri Provincial Court	264	4, 30, 33	laws/regs allowing prisoner to be kept in ankle chains for 2 years, 4 mos const?	Dsmd (moot)
4/2544	Pres of Senate	96	208, 215, 216	Did 10 ministers' holdings or positions in companies violate 208 of the Const?	No
5/2544	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes
6/2544	Political Party Registrar	328(2)	328(2)	Dissolve Pracharath Party?	Yes
7/2544	Political Party Registrar	328(2)	328(2)	Dissolve Naewruam Kasertrakorn Party?	Yes
8/2544	Political Party Registrar	328(2)	328(2)	Dissolve Phalang Samakkee Party?	Yes
9-10/2544	Bangkok South Civil Court; Civil Court	264	29	ED and Notification re banking const? (notice outside court's powers)	Yes
11/2544	Supreme Court	264	33	15 of narcotics act (assuming intent to distribute where possess a lot) const?	Yes
12/2544	Ombudsman	198	133	termination of membership of senator/rep upon EC's order for new election const?	Yes
13/2544	Pres of Natl Assembly	266	133	EC's order of new elections const? Order for new elections w/o revoking election rights const?	Yes, Yes
14/2544	Supreme Court	264	29, 48	Bankruptcy Act, allowing ct-appointed receiver to dispose of assets, const?	Yes
15/2544	Court of Appeal for Region 3	264	29	Bankruptcy Act, allowing ct-appointed receiver to dispose of assets, const?	Dsmd

16/2544	Bangkok South Civil Court	264	35, 48, 50	ED (giving merged co rights in extant suit and chance to give ev) consistent w/ Civil Code? Constitution?	Dsmd, Yes
17/2544	Phrae Provincial Court	264	285	Election law (applicant died)	Dsmd
18/2544	Pres of Senate acting as Pres of Natl Assembly	266	258	NCCC members partnership interests and actions violated 258?	No
19/2544	NCCC	295	292	Intentionally failed to provide asset, or gave false info?	Yes
20/2544	NCCC	295	292	Intentionally failed to provide asset, or gave false info (Thaksin's Case)?	No, Dsmd
21/2544	Political Party Registrar	328(2)	328(2)	Dissolve Thai Samakkee Party?	Yes
22/2544	Political Party Registrar	328(2)	328(2)	Dissolve Chat Kasertrakorn Party?	Yes
23/2544	Political Party Registrar	328(2)	328(2)	Dissolve Ruk Samakkee Party?	Yes
24/2544	Political Party Registrar	328(2)	328(2)	Dissolve Raam Siam Party?	Yes
25/2544	Political Party Registrar	328(2)	328(2)	Dissolve Sangkom Prachachon Party?	Yes
26/2544	Political Party Registrar	328(2)	328(2)	Dissolve Phituk Thai Party?	Yes
27/2544	Suphan Buri Provincial Court	264	50	Bd of Sugar regs/notices ("laws" for purposes of 264) const?	Dsmd
28/2544	Political Party Registrar	328(2)	328(2)	Dissolve Seree Dharma Party (to amalgamate)?	Yes
29/2544	Political Party Registrar	328(2)	328(2)	Dissolve Chaorai Chaona Thai Party?	Yes
30/2544	Political Party Registrar	328(2)	328(2)	Dissolve Sattha Prachachon Party?	Yes

31/2544	Political Party Registrar	328(2)	328(2)	Dissolve Phalang Kasertrakorn Thai Party?	Yes
32/2544	Political Party Registrar	328(2)	328(2)	Dissolve Niti Mahachon Party?	Yes
33/2544	Ombudsman	198	235, 276	ED allowing cts to appoint absolute receivers const?	Yes
34/2544	Political Party Registrar	328(2)	328(2)	Dissolve Prachachon Party?	Yes
35-36/2544	Central Bankruptcy Court	264	26, 29, 30, 48, 252, 335(1)	Bankruptcy Act, allowing creditors valued at more than 50% (???) to accept a business rehab plan const?	Yes
37-39/2544	Central Bankruptcy Court	264	29, 30, 48	Bankruptcy Act discriminatory? (like 35-36/2544)	Dsmd
40-49/2544	Bangkok South Civil Court; Civil Court; Samut Sakhon Provincial Court	264	26, 29, 30, 48, 87	ED's relating to finance const (not specifying sections)?	Dsmd
50/2544	Central Tax Court	264	30	legislation tax court to make its rules const? Reg re discovery/witness lists law under 264?	Yes; No
1/2545	Political Party Registrar	328(2)	328(2)	Dissolve Thin Thai Party?	Yes
2/2545	Political Party Registrar	328(2)	328(2)	Dissolve Ekhapharb Party?	Yes
3-4/2545	Senate, Pres of Senate	266, 262	90, 92, 175	House's res disagreeing w/joint committee's version of a bill prior to Senate's review = w/holding bill?	No
5/2545	Political Party Registrar	328(2)	328(2)	Dissolve Sangkom Thai Party	Yes



6/2545	Supreme Court	264	49	21 of Act on Expropriation of Immovable Property (on compensation for takings) const?	Yes
7/2545	Bangkok South Civil Court	264	57	Lack of public participation in Bank of Thailand decisions/policies const?	Yes
8/2545	Political Party Registrar	328(2)	328(2)	Dissolve Sangkhom Mai Party?	Yes
9/2545	Thonburi Civil Court	264	26-30	ED on Finance (allowing mergers) const? (4/2542)	Yes
10/2545	Political Party Registrar	328(2)	328(2)	Dissolve Phalang Thai Party?	Yes
11/2545	Political Party Registrar	328(2)	328(2)	Dissolve Chaona Phattana Pratet Party?	Yes
12/2545	Political Party Registrar	328(2)	328(2)	Dissolve Kwamwangmai Party? (to merge)	Yes
13/2545	Thon Buri Civil Court	264	4, 5, 26-29, 50, 57	Provisions of Commercial Banking Act (allegedly favorable to banks) const?	Yes
14/2545	NCCC	295	292	Intentionally failed to submit asset info?	Yes
15/2545	Pres of Natl Assembly	266	?	Procedure for removal of CC judges (related to Thaksin's case)	NA
16/2545	Ombudsman	198	30	26(10) of Rules on Judicial Officials of courts of justice (dqing from taking judge exam for phys) const?	Yes
17/2545	NCCC	295	292	Intentionally failed to submit account info? (Also on when 5-yr prohibition starts)	Yes
18/2545	NCCC	295	292	Intentionally failed to submit asset info?	Yes

19-22/2545	Patum Thani Provincial Court; Dusit District Court; Bangkok South Civil Court	264	29	ED on finance const?	Yes
23/2545	Lampang Provincial Court	264	29	ED on finance const?	Yes
24/2545	Min Buri Provincial Court	264	4, 26, 27, 29, 30, 48, 50	ED on finance const? (Necessity, not to essence of rights; provisions of law)	Yes
25/2545	Bangkok South Civil Court	264	4, 26, 27, 29, 30, 48, 50	ED on finance const? (Necessity, not to essence of rights; provisions of law)	Dsmd
26-34/2545	Bangkok South Civil Court, Civil Court	264	26, 29, 48	ED on finance const? (Necessity, not to essence of rights; provisions of law)	Dsmd
35/2545	NCCC	295	292	Intentionally failed to submit asset info?	Yes
36/2545	Political Party Registrar	328(2)	328(2)	Dissolve Palang Mai Party?	Yes
37/2545	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
38/2545	Pres Natl Assembly	266	138	Powers and duties of EC: procedure followed by selective committee const?	No
39/2545	NCCC	295	292 (interesting split)	Intentionally failed to or submitted false asset info?	Yes
40/2545	Thon Buri Civil Court	264	4, 26, 27, 29, 30, 48, 50	ED on Asset Mgmt Corp (assigning of claim rights to ASM) const?	Yes
41/2545	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
42/2545	Political Party Registrar	328(2)	328(2)	Dissolve Boran Ruk Party?	Yes
43/2545	Political Party Registrar	328(2)	328(2)	Dissolve Phattana Thai Party?	Yes

44/2545	Central Admin Court	264	29, 30	State Atty Rules (excluding people w/ phys deformities can't test) const?	Yes
45/2545	Thon Buri Civil Court	264	30, 50, 57, 87	Com. Bkg Act (giving Bank of Thailand power to set interest ratesconst? (Mostly estopped)	Yes
46/2545	Civil Court	264	87, 92, 218	ED re Com Bkg Act const (procedure - bypassing natl assbly) const?	Dsmd
47/2545	Thon Buri Civil Court	264	30, 50, 57, 87	Sec. 30 of finance act const?	Yes
48/2545	Central Tax Court	264	29, 30, 80	Sections of Tax Code const (disc against marrieds)?	Yes
49/2545	Bangkok South Civil Court	264	29, 30	Com Bkg Act and Finance Act (rights in suit) const?	Yes
50/2545	Political Party Registrar	328(2)	328(2)	Dissolve Saangsan Thai Party?	Yes
51/2545	Political Party Registrar	328(2)	328(2)	Dissolve Thai Ruam Phalang Party?	Yes
52/2545	Political Party Registrar	328(2)	328(2)	Dissolve Witee Thai Party?	Yes
53/2545	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
54/2545	Political Party Registrar	328(2)	328(2)	Dissolve Kasert Seree Party?	Yes
55/2545	Political Party Registrar	328(2)	328(2)	Dissolve Num Thai Party?	Yes
56/2545	Political Party Registrar	328(2)	328(2)	Dissolve Chat Prachachon Party?	Yes
57/2545	Bangkok South Civil Court	264	29, 30	ED's re finance const?	Yes
58/2545	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
59/2545	Pres of Senate	262	29, 48, 46, 56	Ores Bill (mining rights under owned land, and envirmntl impact) const?	Yes

60/2545	Political Party Registrar	328(2)	328(2)	Dissolve Seree Thai Party?	Yes
61/2545	Civil Court	264	29, 50	ED re finance const?	Yes
62/2545	Criminal Court	264	35, 44, 46	Petroleum Authority Act (oil protestors) const?	Yes
63/2545	Political Party Registrar	328(2)	328(2)	Dissolve Thai Maharat Party?	Yes
64/2545	Political Party Registrar	328(2)	328(2)	Dissolve Thai Thammathippati Party?	Yes
1/2546	Central Admin Court	264	282, 283, 284	Changwat admin rules (giving changwat overlapping power to collect taxes and fees denied self-determination?) const?	Yes
2/2546	NCCC	266	301	Could Civil Service Com'n alter NCCC's determination re corrupt acts?	No
3/2546	Central Labour Court	264	4, 26, 29, 30	Social Insurance Act (app for birthing benefits time barred) const?	Yes
4/2546	Civil Court	264	7, 29, 233, 271	ED re finance const?	Yes
5/2546	Political Party Registrar	328(2)	328(2)	Dissolve Sangkom Prachathippatai Party?	Yes
6/2546	Lampun Provincial Court	264	46, 50, 76, 78, 84	Spirits Act (requiring license for distillation of spirits) const?	Yes
7/2546	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
8-11/2546	Bangkok South Civil Court	264	29	ED re finance and Com Bkg Act const?	Yes
12/2546	Palang Dhamma Party Leader	192	??	Seeking to overrule Political Party Registrar's decision	Dsmd

13/2546	Political Party Registrar	328(2)	328(2)	Dissolve Thai Mahachon Party?	Yes
14/2546	Pres of House	219	218(1)	ED on excise taxes met procedural reqs (6 judges against, but would need 2/3 according to 219(4))?	Yes
15/2546	Political Party Registrar	328(2)	328(2)	Dissolve Kae Punha Chat Party?	Yes
16/2546	Buriram Provincial Court	264	233	Section 175 of Crim Pro Code (re production of ev by prosecution to ct) const?	Dsmd
17/2546	Chachengsao Provincial Court	264	241	175 of Crim Pro Code const?	Yes
18/2546	Ombudsman	266	197	Selective Committee of EC person?	NA
19/2546	Ombudsman	266	197, 198	Sel Com. for judges of CC person?	NA
20/2546	Ombudsman	266	197	Ombudsman has discretion to determine if provisions under 197 present const q?	Yes
21/2546	Ombudsman	198	30	Names Act (requiring women to take husband's names on marriage) const	No
22/2546	Nonthaburi Provincial Court	264	30	ED on Asset Mgmt const?	Yes
23/2546	Political Party Registrar	328(2)	328(2)	Dissolve Suntipab Party?	Yes
24/2546	Ombudsman	198	236	Military Courts Act (allowing provincial mil ct to try case but not pass jdgmt) const?	No
25/2546	Political Party Registrar	328(2)	328(2)	Dissolve Phalang Mahachon Party?	Yes
26/2546	Supreme Court	264	64	Act re drugs (harsher penalties for govt officials) const?	Yes

27/2546	Supreme Court	264	26, 30, 33, 48	Drugs act (allowing taking of drug \$ pending trial) const?	Yes
28/2546	Criminal Court	264	33, 48	Drugs act (taking \$) const?	Yes
29/2546	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
30/2546	Thonburi Civil Court	264	29, 30	ED re bkg and finance const?	Yes
31/2546	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
32/2546	House	180(7)	180(6)	Manner of appropriations const?	Yes
33/2546	NCCC	266	293	Act requiring NCCC to disclose financial reports of people other than PM and Ministers const?	Dsmd
34/2546	Civil Court	264	30	Bankruptcy Act const?	Yes
35/2546	Central IP and Intl Trade Court	264	30	Bankruptcy Act const?	Yes
36/2546	Central IP and Intl Trade Court	264	30	Bankruptcy Act const (provision of law)?	Dsmd
37/2546	Ombudsman	198	30	Nationality Act (providing procedure foreign women who marry Thai men get nationality but not vice-versa) const?	Yes
38/2546	Political Party Registrar	328(2)	328(2)	Dissolve Sangkom Pattana Party?	Yes
39/2546	Political Party Registrar	328(2)	328(2)	Dissolve Thai SereeParty?	Yes
40-41/2546	Civil Court	264	29, 32, 48, 235	Money laundering Act (taking \$ = crim or civil property matter?) const?	Yes (civil)
42/2546	Political Party Registrar	328(2)	328(2)	Dissolve Tai Party?	Yes
43/2546	Pres Natl Assembly	266	159(4)	Senate motion to establish 21 committees const	NA

44/2546	Pres Natl Assembly	266	257, 261	committee to select choices for CC (duties of overlap w/ Senate) done const?	Yes
45/2546	Ombudsman	198	30	Election law (holding Thai nationals w/ foreign dad to higher standard) const?	No
46/2546	Chivit Ti Di Kwa Party Leader	192		political party registrar's order denying acknldgmt of amendments to pty's bylaws compliance w/const?	Yes
47/2546	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
48/2546	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
49/2546	Ubon Ratchathani Provincial Court	264	32	Parties act (criminalizing failing to file financial reports) const?	Yes
50/2546	Political Party Registrar	328(2)	328(2)	Dissolve Amnaj Prachachon Party?	Yes
51/2546	Political Party Registrar	328(2)	328(2)	Dissolve Kasettrakorn Party?	Yes
52/2546	Election Commission	266	145(1)(3)	Can EC be subject to legal proceedings in admin ct?	No
1-24/2547	Central Admin Court, Nakorn Rachasima Admin Court, Songkhla Admin Court	264	276	enacting provisions re admin courts const?	Yes
25/2547	Supreme Admin Court	264	46, 50	Act req'g permit to sell [alcoholic rice drink?] const?	No
26/2547	Political Party Registrar	328(2)	328(2)	Dissolve Seritham party?	Yes
27/2547	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes

28/2547	Central Admin Court	264	29, 50	Act req'g expiration for nursing licenses where none had existed before const?	Yes
29-30/2547	Pres of Senate and Pres of House	219	218(1)	procedure enacting ED's re crim law and money (justifiable on the grounds listed in 218?) const?	Yes
31/2547	Pres of the Natl Assembly	266		Can Senate recall a bill submitted to PM before King signs it due to internal inconsistencies?	Yes
32-34/2547	Songkhla Provincial Court; Pattani Provincial Court	264	248, 276	Act re elections of local authorities - which courts have auth over cases?	Dsmd
35/2547	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
36/2547	NCCC	266	304-306	NCCC req'd to verify petition (and names) before investigating CC judges?	Yes
37/2547	Civil Court	264	29	ED on asset mgmt const?	Yes
38-39/2547	Central Bankruptcy Court	264	6, 27-30, 57	ED on asset mgmt const?	Yes
40/2547	Nakhon Pathom Provincial Court	264	29	ED on asset mgmt const?	Yes
41/2547	Supreme Court	264	4, 5, 7, 26-30, 48, 60, 75, 233	reg re tax (stamp) exemption for govt const?	Yes
42/2547	Political Party Registrar	328(2)	328(2)	Dissolve Thai Prachatipatay Party?	Yes
43/2547	Nakhon Rachasima Provincial Court	264	50	ED re bkg and finance const?	Yes
44/2547	Pres of Natl Assembly	266	256	re powers/procedure of selection committee	NA



45-46/2547	Central Admin Court	264	26, 27, 48, 49	Act re electricity (allowing takings for running electric lines) const?	Yes
47/2547	Pres of Natl Assembly	266	312, 333	State Audit Commission followed const procedure in nominating persons for post of State Auditor General?	No
48/2547	Bangkok Military Court	264	26	Crim Pro Code (discretion of prosecutor) const?	Yes
49/2547	Political Party Registrar	328(2)	328(2)	Dissolve Kased Kaw Na Party?	Yes
50/2547	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
51/2547	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
52-53/2547	Ubon Ratchatani District Court	264	6, 27, 32, 46, 48, 50, 83, 87	Act req'g permit to sell alcohol const (re other than alcoholic rice drink - 25/2547)?	Yes
54/2547	Political Party Registrar	328(2)	328(2)	Dissolve Phalang Seritham Party?	Yes
55/2547	Political Party Registrar	328(2)	328(2)	Dissolve Kaw Na Party?	Yes
56/2547	Political Party Registrar	328(2)	328(2)	Dissolve Thai Phithak Thai Party?	Yes
57/2547	Political Party Registrar	328(2)	328(2)	Dissolve Chat Phathana Party (to merge w/ Thai Ruk Thai?	Yes
58/2547	Supreme Court	264	26-30, 233	221 Code of Crim Pro (re rt to appeal) const?	Yes
59/2547	Political Party Registrar	328(2)	328(2)	Dissolve Chaw Thai Na Party?	Yes
60/2547	Political Party Registrar	328(2)	328(2)	Dissolve Chat Pracha Thai Party?	Yes
61/2547	Political Party Registrar	328(2)	328(2)	Dissolve Reng Ngaan Thai Party?	Yes

62/2547	NCCC	295	292	Intentionally failed to or submitted false asset info?	Yes
63/2547	NCCC	266	300-302	budget/expense q's	NA
64/2547	Ombudsman	198	29, 48, 50	ED on bankruptcy (giving debtors priority in choosing bankruptcy planners) const?	Yes
65-82/2547	Supreme Admin Court	264	4, 6, 27, 29, 62	leg estab'g admin courts and procedures (default/stat of limitations) const?	Yes
83/2547	Political Party Registrar	328(2)	328(2)	Dissolve Seri Prachathipatay Party?	Yes
84/2547	Supreme Admin Court	264	26, 30	leg estab'g admin courts and procedures (court fees req'd even of indigents) const?	Yes
1/2548	Political Party Registrar	328(2)	328(2)	Dissolve Ruam Thai Party?	Yes
2/2548	Political Party Registrar	328(2)	328(2)	Dissolve Chat Prachachon Party?	Yes
3/2548	Political Party Registrar	328(2)	328(2)	Dissolve Ton Trakun Thai Party (to merge w/Chat Thai Party)?	Yes
4/2548	Supreme Admin Court	264	1-3, 6, 28, 29, 50	Provinces exceeded power in punishing failure to pay service and admin taxes/fees on hotels by fine and/or jail?	No
5-26/2548	Supreme Admin Court	264	6, 29, 48	leg estab'g admin courts and procedures (default/stat of limits - 65-82/2547) const?	Yes
27-28/2548	Supreme Admin Court	264	6, 29, 48, 75	leg estab'g admin courts and procedures (default/stat of limits - 65-82/2547) const?	Yes
29/2548	Council of Ministers	266		defining powers	NA

30/2548	Pres of Senate	262(1)	29, 32, 48	38(1) of act re mnfctrg CD's (taking machinery of those who don't comply) const? If not, is it severable?	No; Yes
31/2548	House	266	200(1)	Powers of Natl Human Rights Commission - include investigating and reporting on pipeline?	Yes
32/2548	Ombudsman	198	40, 50, 335	ED re taxes (exemptions for telecom) const?	Yes
33/2548	Central Labour Court	264	29, 30	120 of labour act (re moving operations/notice to employees) const?	Yes
34/2548	Civil Court	264	3, 30	Code of civ and commerce const? Code of Civ Pro const?	Yes; NA
35/2548	Court of Appeal for Region 4	264	231	Political parties act (re regs on parties and admin) const?	Yes
36/2548	Nakhon Si Ayutthaya District Court	264	46, 50, 84, 87	17 of alcohol act (req'g permit to sell alcohol) const?	Yes
37/2548	Court of Appeal for Region 3	264	46, 83, 87	5, 25 of alcohol act (52-53/2547; re making and means to make it) const?	Yes
38/2548	Nakhon Rachasima District Court	264	46, 50, 76, 78, 83-84, 87	5 of alcohol act const?	Yes
39/2548	Nakhon Rachasima District Court	264	46, 50, 76, 78, 83-84, 87	5 of alcohol act const?	Yes
40/2548	Central IP and Intl Trade Court	264	4, 29, 30, 48	90/27 and 90/60 of Bankruptcy Act (re debtors and their insurers) const?	Yes
41/2548	Central Tax Court	264	28-30	45 of act re property tax (transferees assume tax liabilities) const?	Yes

42/2548	Political Party Registrar	328(2)	328(2)	Dissolve Prachatham Party?	Yes
43/2548	Central Admin Court	264	276	3 of act est admin courts and procedures const (1-24/2547)? Council of Ministers competent here?	Yes; NA
44/2548	Central Admin Court	264	276	3, 9, 42 of act est admin courts and procedures const (1-24/2547)?	Yes
45/2548	Supreme Court	264	27, 29	9 of act re prosecuting govt officials const?	Yes
46/2548	Political Party Registrar	328(2)	328(2)	Dissolve Phathana Sangkhom Thai Party?	Yes
47/2548	Political Party Registrar	328(2)	328(2)	Dissolve Reng Ngan Party?	Yes
48/2548	Political Party Registrar	328(2)	328(2)	Dissolve Chat Phathana Party?	Yes
49-50/2548	Prachuab Khirikhan Provincial Court	264	4, 27-30, 48	ED on asset mgmt and code of civ pro const?	Yes
51/2548	Central Admin Court	264	48, 49	29 and 30 of Thai petroleum act (natural resources for good of the people) const?	Yes
52/2548	Political Party Registrar	328(2)	328(2)	Dissolve Chat Prachathipatay Party?	Yes
53/2548	Bangkok South Civil Court	264	26, 27, 30	30 of ED re finance const? (61/2545)	Yes
54/2548	Lamphun Provincial Court	264	26-29, 42, 46, 50	5 (making) and 32 (punishing consumption/possession) of alcohol act const?	Yes
55/2548	Central Admin Court	264		ministerial decree (ordering taking) const?	Dsmd
56/2548	Criminal Court	264	6, 40, 335	11 of the ministerial law (27/2544) and act re TV and radio (crim provisions; permit reqs) const?	Yes

57/2548	Political Party Registrar	328(2)	328(2)	Dissolve Thang Luag Thi Saam Party?	Yes
58/2548	Supreme Admin Court	264	29	49 act est admin courts and procedures const?	Yes
59/2548	Political Party Registrar	328(2)	328(2)	Dissolve Prachachon Party?	Yes
60/2548	State Audit Commission	266		Q re 47/2547	NA
61/2548	Supreme Court	264	30	229 of the Code of Civ Pro (court fees) const?	Yes
62/2548	Supreme Admin Court	264	29, 62, 276	42 and 49 act est admin courts and procedures const?	Yes
63/2548	Court of Appeals	264	4, 26, 29, 30, 33, 48	8 and 10 of ED re fraud const?	Yes

Table 2: Sections Under Which Cases Have Come Before the Court

Section Granting Jurisdiction	#	Cases (years - case numbers)
Section 264 Cases	257	2541 - 5, 8, 9, 11, 12, 16 2542 - 4, 5, 9, 10, 12-35, 38-44 2543 - 1, 2, 7-9, 14-19, 25, 34-53 2544 - 3, 9-11, 14-17, 27, 35-50 2545 - 6, 7, 9, 13, 19-34, 40, 44-49, 57, 61, 62 2546 - 1, 3, 4, 6, 8-11, 16, 17, 22, 26-28, 30, 34-36, 40, 41, 49 2547 - 1-25, 28, 32-34, 37-41, 43, 45, 46, 48, 52, 53, 58, 65-82, 84 2548 - 4-28, 33-41, 43-45, 49-51, 53-56, 58, 61-63
Section 328 Cases	76	2541 - 6 2542 - 2, 45-47 2543 - 3, 4, 29, 64 2544 - 1, 2, 6-8, 21-26, 28-32, 34 2545 - 1, 2, 5, 8, 10-12, 36, 42, 43, 50-52, 54-56, 60, 63, 64 2546 - 5, 13, 15, 23, 25, 38, 39, 42, 50, 51 2547 - 26, 42, 49, 54-57, 59-61, 83 2548 - 1-3, 42, 46-48, 52, 57, 59
Section 266 Cases	50	2541 - 2-4, 7, 10, 15 2542 - 6-8, 11, 36, 51-54 2543 - 5, 6, 13, 20, 21, 26, 32, 33, 58-63 2544 - 13, 18 2545 - 3, 15, 38 2546 - 2, 18-20, 33, 43, 44, 52 2547 - 31, 36, 44, 47, 63 2548 - 29, 31, 60
Section 295 Cases	29	2543 - 10-12, 23, 31, 37, 38 2544 - 5, 19, 20 2545 - 14, 17, 18, 35, 37, 39, 41, 53, 58 2546 - 7, 29, 31, 47, 48 2547 - 27, 35, 50, 51, 62
Section 262 Cases	13	2541 - 13, 14 2542 - 3, 37, 48, 50 2543 - 22, 54-56 2545 - 4, 59 2548 - 30

Section 198 Cases	10	2543 - 24 2544 - 12, 33 2545 - 16 2546 - 21, 24, 37, 45 2547 - 64 2548 - 32
Section 219 Cases	4	2541 - 1 2546 - 14, 29, 30
Section 192 Cases	3	2543 - 30 2546 - 12, 46
Section 96 Cases	2	2542 - 49 2544 - 4
Section 47 Cases	1	2542 - 1
Section 118 Cases	1	2543 - 118
Section 180 Cases	1	2546 - 32

Table 3: Who Has Brought Cases Before the Court

Petitioner	#	Cases (years - case numbers)
House of Representatives <sup>8</sup>	12	2541 – 1, 14 2542 – 3, 36, 49, 50 2543 – 56, 57 2546 – 14, 32 2547 – 29 2548 – 31
Political Party Registrar	76	2541 – 6 2542 – 2, 45-47 2543 – 3, 4, 29, 64 2544 – 1, 2, 6-8, 21-26, 28-32, 34 2545 – 1, 2, 5, 8, 10-12, 36, 42, 43, 50-52, 54-56, 60, 63, 64 2546 – 5, 13, 15, 23, 25, 38, 39, 42, 50, 51 2547 – 26, 42, 49, 54-57, 59-61, 83 2548 – 1-3, 42, 46-48, 52, 57, 59
Senate <sup>9</sup>	14	2541 – 13 2542 – 37, 48, 53 2543 – 21, 22, 54, 55 2544 – 4 2545 – 3, 4, 59 2547 – 30 2548 – 30
NCCC	34	2543 – 10-12, 23, 31, 37, 38, 63 2544 – 5, 19, 20 2545 – 14, 17, 18, 35, 37, 39, 41, 53, 58 2546 – 2, 7, 29, 31, 33, 47, 48 2547 – 27, 35, 36, 50, 51, 62, 63
National Assembly <sup>10</sup>	17	2541 – 4 2542 – 11, 51, 52, 54 2543 – 5, 20, 32 2544 – 13, 18 <sup>11</sup> 2545 – 15, 38 2546 – 43, 44 2547 – 31, 44, 47

<sup>8</sup> This number is inclusive of cases brought on behalf of the House by its president and cases brought by its members.

<sup>9</sup> This number is inclusive of cases brought on behalf of the Senate by its president and cases brought by its members.

<sup>10</sup> This number is inclusive of cases brought on behalf of the National Assembly by its president and cases brought by its members.

<sup>11</sup> The President of the Senate was acting as the President of the National Assembly since it had not yet been constituted due to irregularities in the then recent House elections.



Ombudsman	13	2543 – 24 2544 – 2, 33 2545 – 16 2546 – 18-21, 24, 37, 45 2547 – 64 2548 – 32
Election Commission	8	2541 – 3, 15 2542 – 6-8 2543 – 6, 13 2546 – 52
Provinces and Tambons <sup>12</sup>	7	2541 – 7 (Tha Kam), 10 (Tha Kam) 2543 – 58 (Kantararom), 59 (Chiang Mai), 60 (Koh Pangun), 61 (Bantai), 62 (Koh Pangun)
Party Representatives or Leaders	4	2542 – 1 2543 – 30 2546 – 12, 46
Courts <sup>13</sup>	256	2541 – 8, 9, 11, 12, 16 2542 – 4, 5, 9, 10, 12-35, 38-44 2543 – 1, 2, 7-9, 14-19, 25, 34-53 2544 – 3, 9-11, 14-17, 27, 35-50 2545 – 6, 7, 9, 13, 19-34, 40, 44-49, 57, 61, 62 2546 – 1, 3, 4, 6, 8-11, 16, 17, 22, 26-28, 30, 34-36, 40, 41, 49 2547 – 1-25, 28, 32-34, 37-41, 43, 45, 46, 48, 52, 53, 58, 65-82, 84 2548 – 4-28, 33-41, 43-45, 49-51, 53-56, 58, 61-63
Individuals	1	2541 – 5 (Mrs. Ubon Boonyachalothon)
Council of Ministers	4	2541 – 2 <sup>14</sup> 2543 – 26, 33 2548 – 29
State Audit Commission	1	2548 – 60

<sup>12</sup> This number is inclusive of cases brought by mayors and representatives of administrative organizations.

<sup>13</sup> These are further broken down in the chart immediately following this one.

<sup>14</sup> This case was actually brought by the Minister of Interior and was dismissed because it was brought by a part of the Council, a constitutional organ, not by the actual constitutional organ.

Table 4: Breakdown of Referrals to the Constitutional Court by Other Courts

4(A) Supreme Court and Courts of Appeal (14)

Court	#	Cases (years - case numbers)
Supreme Court	10	2541 – 16 2544 – 11, 14 2545 – 6 2546 – 26, 27 2547 – 41, 58 2548 – 48, 61
Court of Appeal	1	2548 – 63
Court of Appeal (Region 3)	2	2544 – 15 2548 – 37
Court of Appeal (Region 4)	1	2548 - 35

4(B) Provincial Courts (61)

Lom Sak	25	2542 – 9, 12-35
Suphan Buri	7	2541 – 9 2542 – 40 2543 – 16-19 2544 – 27
Songkhla	5	2542 – 4 2543 – 8, 9 2547 – 32, 33
Nonthaburi	2	2541 – 11 2546 – 22
Phra Nakhon Si Ayutthaya	2	2543 – 14, 15
Sikhio	2	2542 – 42, 43
Lampang	2	2543 – 25 2545 – 23
Prachuab Khiri Khan	2	2548 – 49, 50
Lampun	2	2546 – 6 2548 – 54
Samut Sakhon	1	2544 – 49

Patum Thani	1	2545 – 19
Min Buri	1	2545 – 24
Buriram	1	2546 – 16
Chachengsao	1	2546 – 17
Ubon Rachathani	1	2546 – 49
Pattani	1	2547 – 34
Nakhon Patom	1	2547 – 40
Nakhon Rachasima	1	2547 – 43
Satun	1	2541 – 8
Chon Buri	1	2544 – 3
Phrae	1	2544 – 17

4(C) District Courts (8)

Nakhon Rachasima	2	2548 – 38, 39
Ubon Rachathani	2	2547 – 52, 53
Nakhon Si Ayutthaya	1	2548 – 36
Dusit	1	2545 – 20
Taling Chan	1	2543 – 34
Nakhon Sawan	1	2542 – 44

4(D) Civil Courts (72)

Civil Court	17	2541 – 12 2542 – 10 2543 – 7 2544 – 10, 48 2545 – 31-34, 46, 61 2546 – 4, 34, 40, 41, 2547 – 37 2548 – 34
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Bangkok South Civil Court	30	2542 – 5, 38, 39, 41 2544 – 9, 16, 40-47, 2545 – 7, 21, 22, 25-30, 49, 57 2546 – 8-11 2548 – 53
Thonburi Civil Court	25	2543 – 35-53, 2545 – 9, 13, 40, 45, 47 2546 – 30

4(E) Administrative Courts (80)

Supreme	47	2547 – 25, 65-82, 84 2548 – 4-28, 58, 62
Central	30	2545 – 45 2546 – 1 2547 – 1-18, 21, 22, 24, 28, 45, 46 2548 – 43, 44, 51, 55
Nakhon Rachasima	2	2547 – 19, 23
Songkhla	1	2547 – 20

4(F) Specialty and Other Courts (21)

Central Bankruptcy Court	7	2544 – 35-39 2547 – 38, 39
Criminal Court	5	2543 – 1, <sup>15</sup> 2 2545 – 62 2546 – 28 2548 – 56
Central Tax Court	3	2544 – 50 2545 – 48 2548 – 41
Central Intellectual Property and International Trade Court	3	2546 – 35, 36 2548 – 40
Central Labor Court	2	2546 – 3 2548 – 33
Bangkok Military Court	1	2547 - 48

<sup>15</sup> This case was actually referred by the Bangkok South Criminal Court.



